Supplemental Report

RAILWAY LANDS PART II:

REPORT ON PRECINCT AGREEMENT
FOR PRECINCT "A"
(THE STADIUM PRECINCT)

CITY OF TORONTO PLANNING AND DEVELOPMENT DEPARTMENT
STEPHEN G. McLAUGHLIN , COMMISSIONER MARCH 1986

CITY OF TORONTO
PLANNING AND DEVELOPMENT DEPARTMENT

550/04007
Urban Design
March 13, 1986

To: City Council

Subject: Report on the Precinct Agreement for Precinct "A" - Supplemental Report

Origin: Commissioner of Planning and Development (c71cnc186021:114)

1. Introduction

In Section 6 of my February 24, 1986 report entitled Report on Precinct Agreement for Precinct "A", it was explained that CN and its solicitors Blake Cassels and Graydon had approved the form and content of the Stadium Precinct Agreement subject to a detailed review of the document's language. I would like to advise Council that this review by CN has now been completed, as has a detailed review by the City's Special Counsel on the Railway Lands. The review has resulted in revisions to the Stadium Precinct Agreement, the majority of which were made to correct minor errors and to clarify the intent of in the document. Annexed to this report as Appendix 2 is an amended version of the Precinct Agreement which incorporates these revisions.

In addition to the review by the City's Special Counsel and by CN's solicitors, the Stadium Precinct Agreement was circulated for comments in accordance with Section 11.14 of the Railway Lands Official Plan Part II. The comments which have been received from this circulation are annexed to this report as Appendix 1 and discussed in detail in Section 2 of this report.

In compliance with the provisions of Section 11.12 of the Part II Plan, the Stadium Precinct Agreement now before Council has been executed by the President of CN Real Estate, Mr. David H. Burstow. Three executed copies of the Agreement are being held in escrow by the City's Special Counsel until the date of reaffirmation of the Stadium Precinct Bylaw by City Council. Upon reaffirmation, the Agreement will be released from escrow to the City for execution.

2. Circulation and Review of Precinct Agreement

As noted earlier the Stadium Precinct Agreement appended to my February 24, 1986 report has been circulated in accordance with Section 11.14 of the Part II Plan to City, Metropolitan, Provincial and Federal officials, and the officials of other commissions, authorities and bodies involved in the servicing of the Railway Lands. In response to this circulation, I have received comments from the City Commissioners of Housing, Parks and Recreation and Public Works and from the Commissioner of Planning for Metropolitan Toronto. These comments are discussed below.

2.1 Commissioner of Housing

The Commissioner of Housing raises a number of points in his letter of February 21, 1986 most of which are suggestions to clarify the language of the Agreement. Under the heading 8.01(1) in the Commissioner's letter there is a suggestion to revise the language of the Stadium Precinct Agreement to be more precise about the allocation of permitted development rights. This change has been made, as requested and is reflected in the amended Stadium Precinct Agreement attached to this report.

Under Section 8.01(3) the requirements for CN to produce various agreements, conveyances and documentation prior to the OMB Order Date is noted in the context of a question asking how the OMB Order Date can be identified in advance. It is the intention of the City's Special Counsel to request that the Ontario Municipal Board not issue its order on the Hearing until receiving notification from the City that the City has received, and is satisfied with, the documentation that CN is required to submit to the City prior to the Order Date. It is the expectation of the City's Special Counsel that the Board's Order will actually be prepared and then withheld pending the notification of the OMB by the City's Special Counsel that all is in order.

Under Section 8.02 of the Commissioner's letter, there is a request for clarification of the extent of the lands which will form the initial conveyance of land to the City for housing purposes. These lands are illustrated on Schedule S-2 of the amended Stadium Precinct Agreement and consist of Part 3, 4, 6, 18, 19, 24 and 25 and the portion of Part 15 abutting Part 6. The proposal outlined by the Commissioner of Housing in the second paragraph of Section 8.02 requiring a cash in lieu payment by CN, equivalent to the market value of the Housing Lands, in the event that the Hi Line is not removed within two years and the lands cannot be conveyed to the City was discussed with CN and found to be unacceptable to them.

The comments of the Commissioner raised under Section 8.03(2) have been accommodated in the amended version of the Stadium Precinct Agreement.

Section 8.05 of the Stadium Preinct Agreement sets out the provisions for the joint planning of the City Housing

Precincts by CN and the City. In his letter, the Commissioner explains that he had requested that no further CN precincts be approved until precinct plans for the City Housing Precincts are approved. Inclusion of such a measure is, I believe unnecessary, given the provisions of the Precinct Agreement with respect to the planning and development of the City Housing Lands. Under the terms of the Stadium Precinct Agreement CN and the City are required to prepare a joint precinct plan for the Housing Precincts within twelve (12) months of the Stadium Precinct Agreement coming into force. If the City and CN cannot agree on a precinct plan the Commissioner of Housing may independently submit a precinct plan to Council for approval, upon receipt of which development may proceed. It is because of this ability to proceed with a precinct plan independent of CN that the City's Special Counsel on the Railway Land and I believe the City's interests in this matter are fully protected.

Schedule II referred to in the Commissioner's letter has been amended and is annexed to the revised Stadium Precinct Agreement as Schedule T.

The matter of residual non-residential density raised in the Commissioner of Housing's letter under Section 8.06 was addressed in the fifth sentence of Section 8.01(1) of the Stadium Precinct Agreement appended to my February 24, 1986 report. This wording has not been revised in the amended version of the Stadium Precinct Agreement appended to this report.

The final matter raised in the Commissioner of Housing's letter concerns the upstand beam along the east side of the Bathurst Street Bridge and is indeed, an issue which must be addressed. It is however a matter of detail which is best examined at the Precinct planning stage for the first City Housing Precinct.

2.2 Commissioner of Parks and Recreation

Appended are two letters dated January 27, 1986 and February 25, 1986 from the Commissioner of Parks and Recreation. Both letters discuss the contents of the Stadium Precinct Agreement. As the Commissioner notes in the first paragraph of his February 25, 1986 letter the matters raised in his letter of January 27 are satisfactorily addressed, with the exceptions of the items listed in the body of his February 25 letter.

Item 1 of the February 25 letter deals with the Northern Linear Park. In regard to this matter the Commissioner of

Parks and Recreation and I have agreed that this item is a design issue, which is best addressed at the time that Northern Linear Park is actually designed. Because responsibility for the design of each Park in the Stadium Precinct rests with the City, I am confident that the design of the Northern Linear Park will be resolved to the full satisfaction of the Commissioner of Parks and Recreation at the appropriate time.

With respect to the leasing of land to permit Telesat Canada to locate a teleport facility in Tower Park East, this matter is discussed in Section 3.5 of my January 11, 1986 report entitled Railway Lands Part II: Final Report on Rezoning Application for Precinct "A", and on pages 36 and 37 of my February 24 report on the Stadium Precinct Agreement. The issue raised by the Commissioner of Parks in his February 25 letter about Telesat is a valid concern. However, rather than deleting the reference totally, as was suggested in 6.60(3) of the Commissioner's letter, the provisions of the Agreement have been expanded to recognize the City's right to receive the revenes from a ground lease for the Telesat facility should it proceed. I have been advised by the Commissioner of Parks and Recreation that the revised wording of 6.06(3) as contained in the amended Stadium Precinct Agreement is satisfactory.

Item 3 of the Commissioner's letter has been clarified in the Agreement to his satisfaction.

Item 4 of the Commissioner's letter discusses the matter of phasing the City's park cost contribution. The Stadium Precinct Agreement allows the Commissioner of Parks and Recreation to defer, at his choice, the monthly payment of park contributions and to make one lump sum payment at the time each of the parks is completed. Accordingly, I believe this provision resolves the Commissioner's payment concerns.

Item 5 of the February 25 letter is a confirmation of the position in the Commissioner of Parks and Recreation's January 27 letter concerning design matters illustrated on Schedules F and G attached to the Stadium Precinct Agreement. I would simply like to confirm that these design matters will be addressed in accordance with the expectations of the Commissioner, at the time each individual park site is designed.

2.3 Commissioner of Public Works

On March 5, 1986 I received a letter from the Commissioner of Public Works commenting on his review of the Stadium Precinct. The Commissioner raises thirteen (13) points in his letter.

Item 1 noted in the Commissioner's letter was a printing error which has now been corrected.

As requested under Item 2 the definition of the Spadina LRT has been amended and is reflected in the attached version of the Stadium Precinct Agreement. Rather than delete item 3 as was suggested by the Commissioner of Public Works, it has been reworded in a manner satisfactory to the Commissioner to clarify its meaning. The process of jointly selecting the Consulting Engineeer referred to by the Commissioner of Public Works under item 4 has been addressed in the amended Stadium Precinct Agreement to the Commissioner's satisfaction. Clause 3.03(2) of the Stadium Precinct Agreement has been amended in accordance with the recommendation of the Commissioner of Public Works contained in item 5 of his letter. Clause 3.05(2) has also been amended as requested by the Commissioner under item 6 of his letter. Items 7 and 8 have been revised in the amended version of the Stadium Precinct Agreement annexed to this report as requested by the Commissioner. Item 9 of the Commissioner's letter requests clarification of a matter related to the assumption of completed infrastructure. On behalf of the Commissioner of Public Works, the City's Special Counsel discussed this issue with CN who have confirmed that the Commissioner's understanding of the assumption provision is indeed correct. The portion of the bracketed sentence in Clause 4.02(2) referred to by the Commissioner in item 10 was deleted as requested. Item 11 (Clause 5.10(4)) has been clarified to the Commissioner of Public Works' satisfaction and item 12 has been corrected as noted. Under item 13 the Commissioner of Public Works correctly points out an inconsistency with respect to Schedule N.3 which is discussed below and has now been corrected. An revised version of Schedule N.3 is appended to this report and has been inserted into the amended Stadium Precinct Agreement.

2.4 Metropolitan Toronto Planning Department

On February 28, 1986 we received a letter from the Commissioner of Planning for Metro commenting on the February 24 version of the Precinct Agreement.

Under item 1 of the letter the Commissioner points out a potential inconsistency in the Stadium Precinct Agreement relating to the dates shown on Schedule N-3 to the Precinct Agreement. This is the same matter raised by the Commissioner of Public Works under item 13 of his March 5 letter.

Schedule 3 indicates that the reconstruction of Spadina Avenue will not be completed until 1989; while clause 5.03 of the Stadium Precinct Agreement requires that Spadina Avenue Improvements be completed prior to the opening of the Stadium. Because the currently projected Stadium Opening Date is the late fall of 1988 there is indeed a contradiction. The Precinct Agreement does provide that where inconsistencies exist between the body of the Agreement and the Schedules thereto that the provisions of the actual Agreement prevail. However, to ensure that all parties clearly understand the timing requirement for Spadina Avenue and Spadina Bridge, Schedule N3 has been amended to reflect the Agreement provisions that these facilities be completed prior to the actual opening of the Stadium.

Further in this section the Commissioner sets out his position that The Esplanade should not be connected to Spadina Avenue until such time as certain improvements are made to the Spadina Avenue/Lakeshore Boulevard intersection additional to those required in the Stadium Precinct Agreement. I do not share the view of the Metro Commissioner of Planning regarding this matter. The Stadium Precinct Agreement requires that Spadina Avenue be reconstructed to a width of six lanes and with provision for a transit right of way, between Front Street and Lakeshore Boulevard, prior to the opening of the Stadium. To properly access the Stadium and the development which will occur in the Stadium Precinct it is essential that The Esplanade be connected to Spadina Avenue prior to the opening of the Stadium. This intersection is essential to provide the turning movements and functional relationships necessary to ensure satisfactory vehicular access (including that required charter buses) into, and out of, the Stadium Precinct.

On page 47 of my February 24 report the matter of a future pedestrian bridge across Lakeshore Boulevard at John Street is discussed. In that discussion it is explained that such a bridge cannot be constructed until after the Hi-Line is permanently relocated. Under item 2, of his letter the Commissioner requests that the Stadium Precinct Agreement assign responsibility for the provision of this bridge in anticipation of the permanent relocation of the Hi-Line. I would like to point out that the Stadium Precinct Agreement is an agreement between CN and the City of Toronto. The pedestrian bridge in question is not dealt with in the Stadium Precinct Agreement because it will not be cost shared by CN, but rather will be a facility provided jointly by the City of Toronto and Harbourfront. The terms of providing this facility have not been negotiated with the Harbourfront Corporation it is my expectation that it will be on a basis similar to the 50% City/50% CN cost sharing arrangement for the John Street Pedestrian Bridge over the railway corridor. It is my intention to negotiate the financing and provision of this bridge at the appropriate time with Harbourfront.

Under item 3 of the Commissioner's letter, the adequacy of the width of The Esplanade median for use as a transit right of way is questioned. In this regard I would simply point out that there have been no requests made for the City to protect a transit right-of-way on The Esplanade and that the reference in the Agreement is simply a recognition that some space is available within the street allowance for transit purposes if it is ever required.

Item 4 in the Commissioner's letter raises the question of extending fully into Union Station the required pedestrian connection shown on Schedule "M" to the Stadium Precinct Agreement. The Stadium Precinct Agreement as drafted requires that a pedestrian connection be made to the "east side of York Street in the vicinity of Union Station". The provisions of the Agreement shop short however of requiring an internal connection to Union Station. While I support the desirability of making such a connection in concept, until the current study of Union Station being done under the aegis of the Railway Lands Steering Group is completed, I am not prepared to require a connection that technically may not be feasible. If the recommendations of the Union Station Study determine that such an internal connection is feasible, it will be in the interest of all parties to ensure that it is provided.

3. Amendments to the Stadium Precinct Agreement

As I explained in Section 1 of this report revisions have been made to the February 24th, 1986 version of the Stadium Precinct Agreement as a result of a detailed review of the Agreement by CN, the City and other agencies and officials. The overwhelming majority of the revisions are of a minor nature falling generally into three categories: spelling, punctuation and grammar, clarification of intent, and corrections to Section references and to references to the draft reference plans. A large number of these technical corrections are a result of the preparation of a new reference plan for the Stadium Precinct. Many of the part numbers on the new reference plan are different from those shown on the reference plan attached to the February 24 version of the Stadium Precinct Agreement, thereby requiring numerous amendments. Because these amended references do not change, in any way, the substance of the Precinct Agreement, I have not summarized each change in this report. Instead, I have attached to the amended version of the Stadium Precinct

Agreement two new reference plans, identified as Schedules S-1 and S-2 in the Agreement and have corrected each part reference in the body of the Stadium Precinct Agreement as necessary.

With respect to spelling, punctuation and grammar, I have made these corrections as necessary and they are reflected in the document now before Council. Where necessary, wording changes have been made to the Stadium Precinct Agreement to clarify the meaning of certain clauses. Where these revisions do not alter the original intent of the provision I have made the changes without comment. Where wording changes have, in my view, altered the original meaning of the clause, or where additional provisions have been added to the Stadium Precinct Agreement, I have summarized and discussed them in Section 3.2 of this report.

To assist the Members of Council in more fully understanding the revisions to the Stadium Precinct Agreement I have highlighted all amendments, both substantive and unsubstantive, to the February 24 version by underlining each change in wording and by inserting an asterisk where words have been deleted.

3.1 Discussion of Substantive Revisions to the Stadium Precinct Agreement

Below is a review and explaination of substantive changes to the February 24, 1986 version of the Stadium Precinct Agreement. The section references and page numbers listed correspond with the amended version of the document appended to this report as Appendix 2.

Section 1.01 bbb (f) page 17

At the end of this clause, which discusses "Permitted Encumbrances" on the title of lands to be conveyed to the City, we have added a statement that the City shall cooperate in using its legal powers of expropriation to remove unwanted encumbrances. CN shall pay all costs associated with any such expropriation.

Section 1.01 (jjjj) "Prime Rate" page 19

The reference to CN's cost of borrowing as an alternative to the CIBC Prime Rate has been deleted from the Agreement as has the requirement for interest owing to be compounded monthly. This arrangement was discussed with the Commissioner of Public Works who indicated he was satisfied with such an arrangement.

Section 2.01 page 31

The final sentence of this clause was amended to recognize the process of reaffirmation of the Stadium Precinct Bylaw by City Council. Because the Bylaw is to be reaffirmed by the City and because the City is not in a position to execute the Precinct Agreement until after reaffirmation, words were added to provide that CN's execution of the Agreement becomes irrevocable only after reaffirmation of the Stadium Precinct Bylaw by Council.

Section 3.01(2) page 39

This clause was amended at the request of the Commissioner of Public Works to provide for the Consulting Engineer to be jointly selected by CN and the City.

Section 3.03 (3) page 42

This section was amended at the request of the Commissioner of Public Works to provide that should the Commissioner require changes to construction standards during the actual construction of any specific project that the cost of such changes would be shared in accordance with the provisions of the Agreement provided that the work in question has not yet been constructed.

Section 3.11 (1) page 60

The time period for the City to respond to a completion certificate was increased from thirty (30) days to sixty (60) days at the request of the Commissioner of Public Works.

Section 3.13(1) page 67

Changes were made to the timing of the posting of the performance bond required to secure the construction of the Infrastructure necessary to adequately service the precinct. The revisions require CN to post the performance bond on the earlier of (i) the issuance of a building permit for the Stadium or (ii) the initiation of construction of the streets, excluding the placing of fill on the streets to bring them up to appropriate grades. Linking the performance bond timing to the Stadium building permit ensures that all infrastructure necessary to service the Stadium will be available prior to the opening of the Stadium.

Section 5.02 (3) page 83

Words were added to the end of this clause to clarify the provisions of the Part II Plan with respect to the permitted transfer of density from local streets to abutting development blocks.

Section 5.02 (6) page --

This clause was added to supplement information contained on Schedule E to the agreement. The need for additional words was generated by the deletion of similar words on the Schedule. These changes have not altered intent of the Precinct Agreement. A revised Schedule E is appended to the amended version of the Stadium Precinct Agreement.

Section 6.03 (6) page 131

Words were added to the first sentence of this clause to clarify that the meaning of "every reasonable effort" does not imply the payment of money to Marathon by CN solely for the purpose of securing the relocation of the Hi-Line.

Section 6.05 (2) page 138

A provision was added to the end of the clause acknowledging that the City will grant easements to permit the use and maintenance of existing services to the extent that such services are necessary and must be protected.

Section 6.05 (4) page 139

The wording of this clause was amended to provide for what were previously implied rights to operate permitted Subsurface Elements, and to provide for the access necessary to exercise such rights.

Section 6.06 (3) page 141

As was explained in Section 2.2 of this report an amendment was made to this clause to recognize the City's right to ground rent for the land to be occupied, by a Telesat facility should it be permitted and built.

Section 6.06 (5) page 143

This clause was added to deal with two previously unconsidered minor intrusions into Tower Park East. The first consists of a very small above grade structure related to the CN Tower which will be excluded from the conveyance of land for the park. The other is an existing below grade kitchen and storage facility for the CN Tower and provisions have been made in the Stadium Precinct Agreement to permit its continued use and existence.

Section 6.07 (3) page 144

Substantial revisions were made to this clause to deal more explicitly with various matters which had been discussed with CN but not incorporated into the body of the Agreement.

In short these revisions include permitting CN access to Community Park to construct the permitted parking garage. Further, the City is agreeing to keep a sufficient portion of Community Park free of buildings so that CN can exercise its rights to construct a parking garage beneath the surface of the park. CN for its part is acknowledging that the garage will be constructed to accommodate not less than six (6) feet of earth on its roof so that the City is not restricted in its ability to plant trees above such a structure.

Section 6.12 (1) page 151

A sentence was added at the end of the clause to provide that any lands reserved from a lease to the City would be conveyed to the City once such lands are no longer required for their original purpose.

Section 7.02 (2) page 158

Two sentences were added to the end of this clause to make explicit the understanding that the designing of parks by the City and the exercising of permitted subsurface rights by CN shall be done in a manner which reflects the rights of the other party.

Section 7.02(3) page 159

The numbers shown in this section were adjusted to reflect changes made to the boundaries of the various parks. These numbers are consistent with the numbers in my March 3 report on Cost Sharing of Parks and Infrastructure.

Section 7.04 page 166

Amendments were made to this section to clarify the timing of Parks Improvements to Southern Linear Park.

Section 7.12(1) page 184

This section was revised to make explicit the timing of the posting of the Performance Bond to ensure that CN completes the construction of the Southern Linear Park.

Section 8.03(2) page 194

At the end of the clause a sentence was added at the request of the Commissioner of Housing to ensure that future conveyances to the City, of City Housing Lands, will consist of whole parts identified on a reference plan based on an approved Precinct Plan.

Section 11.07 page 216

Revisions were made to this Section to clarify the status of the Concept Plan and to identify the requirement that the Concept Plan be approved by the City ("Amended Concept Plan"). A provision was also added to the clause to prescribe a process for the removal of Part Lot Control should the City not approve an Amended Concept Plan. Section 4.2 of this report also discusses matters related to revising and approving the Concept Plan.

Section 4 - Other Matters

4.1 Spadina Avenue/Bridge Reconstruction

My March 3, 1986 report entitled Estimated Infrastructure Costs - Precinct A presents, on Table 1, a summary of the estimated costs of constructing the infrastructure elements required to satisfactorily service the Stadium Precinct.

The first item listed in Table 1 is the Spadina Avenue Bridge, for which the CN cost obligation is shown to be $4,720,000. I would like to emphasize several points with respect to this estimate. The first is that CN's obligation with respect to the reconstruction of Spadina Avenue and Bridge remains as set out in Section 5.03 of the Stadium Precinct Agreement. The Agreement, requires CN to contribute to the total cost of the reconstruction in an amount equal to the full cost of the project less all provincial subsidies applicable to such work. The $4,720,000 figure in my March 3 report represents the current estimate of CN's obligation, net of all such applicable provincial subsidies. We have also been advised that the estimated total cost to reconstruct Spadina Avenue and the Spadina Avenue Bridge, is between 9.7 million and 11.7 million dollars.

4.2 Agreements between CN Realty, Metro and the Stadium Corporation

Negotiations are still under way to finalize arrangements between CN Realty, Metropolitan Toronto and the Stadium Corporation. These agreements will cover such elements as land leases, the pumping station, the relocation of the Metro Works Yard, and the use of development rights within the Stadium Precinct. Among the items to be settled is the site to which the Metro Works Yard will be relocated. There are a number of options principally in the Port District, including one which is Metro land now leased by the City and used as playing fields. We are seeking to ensure that in whatever final arrangements are reached, that the objectives of Metro and the City can both be achieved. In any case, the relocation process will have no impact on City facilities this year, and we expect that no long term problems will arise either. It is now expected that these arrangements will be reported to the Economic Development Committee of Metro Toronto at its meeting of April 2. If necessary, I will report on any implications that these arrangements may have for the City at that time.

4.3 Concept Plan - Precinct A

Appended to this report is a copy of the draft Concept Plan for the Stadium Precinct. As discussed in Section 11.07 of the Stadium Precinct Agreement CN has agreed to amend this draft Concept Plan to conform with the Stadium Precinct Bylaw and the requirements of the Environmental Agreement. The revised Concept Plan will be then submitted to Council for approval. After adoption of the Concept Plan by the City it will be registered on title to the Stadium Precinct Lands. After registration, all applications for Site Plan Approval under Section 40 of the Planning Act will need to conform with the provisions of the "Amended Concept Plan".

Recommendation

1. That this report be received in accordance with Recommendation 3 of my report entitled Report on Precinct Agreement for Precinct "A".

for

Stephen G. McLaughlin
Commissioner

MH:jp

APPENDIX I

Appendix 1

Responses received to criculation of Stadium Precinct Agreement

Letter from the Commissioner of Housing Department dated February 21, 1986

In response to your letter of February 20th forwarding the final draft of the above, I have no problem with the Agreement which is so major as to prevent its publication in its present form. Nevertheless, I do have various comments, as follows:

Section 8.01(1) - Fourth sentence

As presently drafted it could be construed to mean that the housing plus non-residential development (together) are permitted a maximum density of 200,000 square feet. If the clauses in this sentence were reversed to read "...housing plus a maximum gross floor area of 200,000 square feet of ancilliary non-resdential development, all as permitted..." it would be clearer.

Third last sentence

I am unclear about what constitutes the Housey Street extension to The Esplanade. Is it the ´L´ Street east of Portland? West of Portland, Housey is already shown as a Primary Street, and this already extends east one block on the plan I am working with. This is an issue which may appropriately be examined in the precinct planning process.

Section 8.01(3)

It has been my experience that one doesn´t know in advance when an OMB Order Date will occur. How, then, is documentation to be provided 14 days prior to an Order Date?

Section 8.02

The Parts which constitute the initial conveyance of Housing Lands are, I believe, 3, 4, 6, 18, 19, 24 and 25 on a plan identified presently as Schedule 2, not those set out in the draft. Please confirm.

This clause never actually produces land for housing as, if the Hi-line has not been removed in five years, the City can obtain fee-simple title yet must grant a perpetually renewable lease. So long as the Hi-line remains in place the lands cannot be developed for housing. I prefer the Weir & Foulds draft of January 28, 1986, wherein cash in lieu of land was to be provided if the Hi-line had not been removed by a predetermined date. Your February 19th First Draft Report on Precinct ´A´ Agreement mentions that the negotiation of issues between CN and CP/Marathon preparatory to the removal of the Hi-line are going well. If this is the case, there may not be a problem.

Your reference, at the end of this section, "sub-paragraphs (i) and (ii) of Section 6.03(3)" which clause also refers to the same sub-paragraphs, which do not appear therein.

Section 8.03(2)

The 50 percent figures which appear in the table assume that the two remaining blocks to come to the City for housing purposes east of Portland Street will be equal in size. This will not be determined until the precinct plan has been prepared; its main purpose being to ensure that each of the parties obtains developable blocks. Some reference should perhaps be made to the fact that subsequent conveyances will, in any event, be whole parts from an approved precinct plan.

Section 8.05

The City and CN agree to jointly prepare a Precinct Plan for Precincts in which the City Housing Lands are located for submission to Council within twelve months of the Commencement Date, of the Precinct A Agreement. From the definition of Commencement Date, I am unsure whether this submission is to be made within twelve months of the delivery by CN of a signed Precinct A Agreement, or within twelve months of OMB approval of the Precinct A By-law and Agreement.

This clause states that, in the event the City or CN independently submit Precinct Plans for those precincts containing Housing Lands, CN will not submit further Precinct Plans ahead of those for the housing precincts. This allows wrangling over the Housing Precinct Plans to go on indefinitely. I had requested that no further CN Precinct Plans be approved until the Precinct Plans for those precincts containing Housing Lands are approved.

Section 8.06

While the description of the cost sharing of infrastructure appears to be correct, there is no Schedule 11 attached to the draft provided.

Earlier drafts had a Section 8.07 dealing with the allocation of non-residential development density. This has been omitted here. Is it your intention that this issue, like that of the retaining wall along the south side of the rail corridor between Bathurst and Portland Streets be dealt with at the precinct planning stage? The matter of the retaining wall is addressed in your "First Draft Report on Precinct A Agreement", in your response to my previous comments. No reference is made, however, to the matter of the upstand beam along the east side of Bathurst Street which, if it blocks access to the Phase 1 Housing Lands, will have to be removed. I understand that the Historical Board also has an interest in this matter as the Bathurst Street Bridge is an historical structure.

Letter dated February 25, 1986 from Commissioner, Parks and Recreation Department

I am responding to your letter dated February 20, 1986, in which you request that I review the final draft of the Stadium Precinct and the draft accompanying report to the Land Use Committee. I have reviewed these documents in terms of my comments in my letter dated January 27, 1986, and I am in general agreement with their content, with the exception of the following matters.

1. Northern Linear Park

   Schedule L shows a conceptual plan for the Northern Linear Park based on a two-tier pedestrian connection between Spadina Avenue and the Stadium. I am not in agreement with the design details as shown in the schedule for the two-tier pedestrian connection, especially the location of the retaining wall adjacent to the street level sidewalk. However, I agree that if the connection under Peter Street Bridge is not constructed, the Northern Linear Park will be at a continuous level between the retaining wall along the Railway Corridor and the street located to the south of Norther Linear Park. I acknowledge that CN will jointly select and retain a Consulting Landscape Architect with the City for Northern Linear Park, but that all normal instructions to the Consulting Landscape Architect related to matters of park programme, use and detailed design rests with the City. Accordingly, I expect that my concerns regarding the appropriate use and detailed design matters respecting this park will be dealt with through my instructions to the Consulting Landscape Architect at the appropriate time.

2. Telesat Lease - Tower Park East

   I propose that the following clause contained in Section 6.06, subsection (3) be deleted: "City agrees that CN may intervene as lessor in any lease settled by City with Telesat so that CN may receive all net monetary benefits flowing from rentals to be paid under a Telesat lease in which event City will grant a sub-demise to CN of the same lands on the same terms and conditions except for rent".

   In my view, Tower Park East is an extremely important park in the development of the Railway lands. The building of the Telesat structure above grade within the park is an imposition on the potential park design. Any benefit derived from its inclusion should be in the favour of the City.

   I am currently negotiating with Telesat on a number of matters, including siting, grade related and park related uses, access, hours of operation, and other matters. Discussions related to the lease are part of an entire package of items currently being discussed. I strongly believe that this clause would hamper my negotiations with Telesat. I plan on reporting further on the subject of my detailed negotiations with Telesat as soon as possible.

3. Interim Pedestrian Walkways - Tower Park East

Schedule M refers to a possible connection across the north end of the CN Tower building and the north end of Tower Park East. Matters related to the diagonal interim pedestrian walkway in Tower Park East as outlined in Section 6.06, subsection (4) and Section 7.16 should also apply to the interim pedestrian walkway as contemplated in Schedule M.

4. Progress Certificates

While I am in agreement with the process of monthly payments, no payments are to begin until at least January 1, 1987. Schedules N4 and N5 anticipate an earlier construction start on the parks than was anticipated in Schedule 4B dated September, 1985, which is reflected in my current capital budget and programme for proposed capital works, 1987 - 1990.

5. Detailed Design Matters Respecting Schedules

I have advised members of your staff of my comments respecting detailed matters of design as shown in the schedules 3A and 3B, now referred to as Schedules F and G. I wish to reiterate my position on these detailed matters and I expect that these will be dealt with accordingly at the detailed design stage.

If you have any questions related to these and any other matters, please contact John Jung at 7251. Signed: Herb Pirk

Letter from Mr. H. Pirk, Parks & Recreation Department, dated January 27, 1986 to Mr. M.J.McQuaid, Weir & Foulds

I am responding to your letter dated January 8, 1986, in which you submitted CN's proposed draft Precinct Agreement for my comment. I understand that John Jung has already met with you a number of times to discuss the draft. Generally speaking, I have a number of concerns which should be addressed in our version of the Precinct Agreement. They are as follows:

Page 6 - Definition of "Infrastructure" includes "parks".

This is inconsistent with other terms used in the text and Table 1. I suggest that "parks" be removed from this definition. Do "street trees" fit within this definition? If so, this should be made explicit in the Agreement.

Page 8 - Definition of "Park Lease" refers to "surface rights".

As you know, my position on any subsurface facilities is that they may be permitted as long as a minimum depth of 6′ of soil is provided for landscaping purposes. I would like "surface rights" to reflect this depth. Also, this definition refers to subsurface rights reserved in favour of CN as specified in Scheduled 3H and 3J. As for Schedule 3H, CN assumes that Tower Park East is leased, whereas I have assumed the park in fee simple, or 999 year lease, including subsurface rights. Hydro and Telesat will be dealing with the ultimate owner, the City, in this regard. Schedule 3J may be premature and should be withdrawn until we have had further discussions on it.

Page 16 - The list of schedules refers to Schedule 3D whereas the Final Report on Rezoning Application for Precinct A refers to 3D1 and 3D2.

Page 22 - Section 3.01 refers to an overriding clause "Except as otherwise expressly provided in this Agreement, CN shall have the overall responsibility for the design and construction of all Infrastructure". Unless the definition for "Infrastructure" specifically excludes "Parks", I cannot agree with this.

Page 49 - Section 5.05 - Sidewalks

CN indicates that it will complete the sidewalks as shown in Schedules 3A and 3B. I assume this includes the lighting as discussed but no mention is made of the trees as shown in 3A. However, there is no discussion here regarding who is responsible for the installation of trees. The assumption appears to be that the trees are part of the infrastructure and Schedule 13A breaks it down as follows: Esplanade (CN: 66.6% - City 33.3%); Portland

Street (etc.): (CN 50% - City 50%); Local Streets (CN: 100%). This needs to be more explicit. I understand that trees, overall, will be provided on the basis of 75% CN - 25% City.

Page 54 - Section 5.13 - Pumping Station

Our proposed Precinct Agreement should indicate clearly that all parties, including Metro, understand that part of the Hi-Line Park will be above the proposed relocated Metro Waterworks Station. Accordingly, all possible provisions to protect the City in this regard should be explicitly spelled out in the Agreement. I am concerned that Metro may restrict our ability to use the Highline berm in some way.

Page 54 - Section 5.14 - Bus Parking

I understand that the City's position will be to require 125 bus parking spaces instead of the 50 spaces proposed by CN. Is this to be a temporary or permanent location? Will the pathways leading to the major bus parking facilities place a possible hardship on any of the parks? I suggest also that this parking facility should be landscaped.

Page 55 - Section 5.15 - Pedestrian Walkway

CN indicates that it "will provide a pedestrian connection from the Stadium to the vicinity of Union Station" as shown in Options 1-3 on Schedule 3G. Part of the diagonal walkway through Tower Park East is shown. The pathway through Tower Park East will only be temporary until a final design for the park is prepared and implemented. Since this pathway is meant to connect the Stadium and one of the options over the rail corridor, I am of the opinion that this temporary pathway be provided and maintained by CN. Similarly, any pathway linking the Stadium and the pedestrian bridges to Simcoe Street across the top of Tower Park East should be provided and maintained by CN. These pathways are to be relinquished at the time of the final design for Tower Park East.

Page 60 - Northerly Linear Park

CN is proposing to grant the City a Park Lease for the Linear Park. I have always understood that the Linear Park was to come to the City in fee simple. In principle, wherever title is held we should receive the lands conveyed in fee. However, I am in agreement with the recent discussions to obtain a 999 year lease (known as "Quasi-fee") in place of fee, as long as the lease is unterminable and renewable. CN is proposing that it will construct the retaining wall for the Northerly Linear Park "so as to elevate it to grade level as shown on Schedule 3F". My position on this matter is that the Linear Park should be flat and continuous to grade with the adjacent street level. I have stated in the past that I am concerned that the depressed areas will become unsafe and unused, and that it would be difficult to maintain. However, I have expressed to members of the Urban Design Group that I would consider a design with grade changes if Spadina and Peter Street underpasses are incorporated as long as some form of access for the disabled and other wheeled vehicles including maintenance vehicles, are able to move easily between levels, and the maintenance is kept to a minimum. Included in this discussion is a potential design which provides a reasonably flat area in the centre portion of the linear block. Notwithstanding my position that the City should receive Linear Park in fee or quasi-fee, I am concerned that after CN constructs the retaining wall, we will be responsible for it thereafter. I suggest that you propose CN maintain ownership of the retaining wall in association with the rail corridor.

CN also proposes to reserve the right to enter the Northerly Linear Park at any time for access, excavation and construction. In principle I have no objection, however, I would like our proposal for an agreement to set out the specific purposes under which CN may request to the City, within 72 hours written notice, to enter and use the Northerly Linear Park, subject to agreeing to restore the surface and landscaping.

Page 61 - Section 6.03 - Southerly Hi Line Linear Park

CN propose that the City will receive the Hi Line in the form of a park lease after Marathon makes it available to CN. The term of the lease should be specified. In principle, I would still prefer to obtain fee simple ownership in the long run where possible. I am also concerned that the way CN's proposal for an agreement is written, there appears to be a possibility that the City may not get the Hi Line for a very long time, if every. What if CN and Marathon cannot agree on a number of items including this park? There is no upset date for receiving the park nor established periods for which the Hi Line may be temporarily used for rail purposes. Unless this can be tied down better, I see no pressure for Marathon and CN to do anything about it. My opinion is that we should receive the Hi Line for park purposes without a right reserved for future rail purposes. An interim removal of the tracks is not appropriate.

Page 62 - Tower Park West and John Street Corridor

Tower Park West is proposed to come to the City in the form of a park lease. The term should be stated. I understand that the term the City will be seeking is for 999 years. I am in agreement with this as long as it is not terminable and is renewable. However, CN propose that a licence be granted to the City to use the John Street Corridor for park purposes for the life of the Stadium upon completion of its construction. I was also under the impression that John Street Corridor would come to the City in the form of a long term lease. As stated before, I would like to see the City obtain fee simple ownership wherever possible, or a 999 year, unterminable, renewable lease. I am particularly interested in seeing this occur here since long term access between Front Street and the Harbourfront lands is extremely important at this point. Certainly tying this corridor to the life of the Stadium is insufficient. A licence is the least desirable form of conveyance and should not be accepted.

CN also propose that rights be reserved for the Stadium, CN Tower and other facilities and structures. If appropriate, such rights should be explicit in any agreement. As for a possible projection proposed over the John Street Corridor, the agreement should specify what the maximum extent of the projection could be or an area along John Street Corridor to be maintained open to the sky. Alternatively, connecting the John Street Bridge somehow directly to Tower Park West, as discussed with Urban Design, may solve this problem.

Vehicular access to the CN Tower, the Stadium and other possible functions in the area at grade should be limited to emergency, fire and essential service vehicles only. Bus, taxi and private vehicular access at grade should be restricted. However, I am prepared to consider a process where V.I.P. and special event permits could be issued under certain circumstances. Thought should also be given to the possible locations where special event vehicles could be permitted. My concern here is that should a World Series or other major event be covered by all the networks, the entire area around the Stadium could be taken up by television trailers. Alternatively, since these areas will be under my jurisdiction, I will designate areas where trailers could be accommodated on a permit basis.

Page 63 - Section 6.05 - Tower Park East

CN propose that the park will come to the City under park lease. My position in the past has always been that the park be conveyed in fee simple as set out in the Memorandum of Conditions, Section 4.1 (a)(i), including sub-surface rights. A 999 year, unterminable, renewable lease including sub-surface rights, is an acceptable alternative.

Page 63 - Section 6.06 - Community Park

This park is proposed to be conveyed to the City in fee simple with a right reserved for CN to "construct parking and other structures below grade". While CN should be able to provide some underground parking facilities, I do not agree with the proposal to permit "other structures below grade". Also, above grade structures will most likely be necessary for pedestrian access to the parking facilities. I am concerned about their extent and possible impact on the park facility. I am not yet comfortable with any of the proposals for Community Park. It is not clear that by permitting the extnet of the parking below grade, as proposed by CN, what implications this may have on our ability to build recreation or community-related facilities within Community Park. I am uncomfortable about the amount of parking proposed and its possible impact on the park use and surrounding area. I suggest that further discussion take place with Urban Design and Public Works on these matters. CN proposes that it should also have the opportunity to use the surface of the park for access, excavation and construction. This requires further elaboration such as the process by which it can apply to the City for such access; term of use; and condition to which the land and landscaping is returned.

I am also interested in seeing a clause in the agreement with specific upset dates by which Community Park is in place. In the event no parking lot is to be constructed, CN should be required to fill and compact the park to the agreed-upon grade. The park should be as flat as possible in order that proper playing fields could be developed. As to the matter of Schedule 3J, as indicated earlier in my letter, it may be premature to include the schedule in the agreement. Rather the text of the agreement could cover the underground parking and other issues satisfactorily.

Page 64 - Section 6.07 - Park Uses

I am not satisfied with CN´s proposals for park uses. In the case of Community Park, the wording appears to restrict our ability to potentially develop a recreation or community centre. I think that the uses to which we can apply this park to should be those under which the Zoning By-law permits for such uses under a G zoning. In any case, the Parks By-law would govern the activities and restrictions for any dedicated park.

CN proposes that it will maintain the hard surfaced areas in Tower Park West and John Street Corridor in exchange for the City to maintain all grassed and horticultural areas within Tower Park West and the John Street Corridor. I am in agreement with this clause. I am also interested in seeing a clause in our proposed agreement which includes the temporary hard surfaced areas in Tower Park East to be maintained by CN. Furthermore, the responsibility for garbage collection in John Street Corridor, Tower Park East and Tower Park West should be spelled out. I believe that as part of the maintenance agreement, garbage collection should be the responsibility of CN for all the areas of the John Street Corridor and Tower Park West and all the temporary hard surfaced areas in Tower Park East.

I understand from John Jung that you have recommended that Clause 2 of Section 6.07 is to be stricken. If you change your opinion on this matter, I wish to be informed.

Page 66 - Section 6.08 - Publicly Accessible Open Space

I presume that CN have included the John Street Corridor here to be consistent with their proposal to grant the City a licence for use of John Street Corridor for the life of the Stadium. As discussed earlier, I disagree with this intent and, therefore, I suggest that it also be stricken from this clause. CN Plaza is a very different matter and I have no problems with it.

Page 66 - Section 6.09 - Conditions of Lands at Time of Conveyance

This section requires further elaboration and specification. I would like to see a more detailed account of the state of each of the lands to be conveyed. For the most part, these should be conveyed in an improved condition. In the case of Tower Park East, it should be conveyed at the time of the opening of the Stadium in a sodded condition with all temporary pathways in place. I understand that Station Street will not be conveyed until Tower Park East is conveyed in its Phase I condition.

Page 67 - Section 6.10 - Prior Encumbrances

This clause appears to release CN, under certain circumstances, of specific responsibilities and obligations.

Page 68 - Section 7.01 - Landscape Design Consultants

The City is to retain landscape consultants for Community Park and Tower Park East. Since the cost of Community Park is 100% CN´s, the consultants´ costs will also be CN´s in this case. The clause should be clear on this matter. I would also recommend that CN and the City "jointly contract" consultants for Tower Park West, John Street Corridor, Northerly Linear Park and Southerly Hi Line Park. Where CN is to be responsible for 100% of the cost of these parks, such as the Linear Parks, the consultant fees will nevertheless remain with CN.

Page 69 - Section 7.02 - Parks Design

Generally, I am in agreement with the first clause subject to my specific comments sent to Urban Design on January 9, 1986, respecting Schedules 3C, 3D (and 3D2), 3E and 3F. I have reviewed the construction costs on a unit price basis for the various parks and I have the following comments:

Tower Park East: $18 per square foot appears reasonable. Accordingly, Tower Park East would be estimated at $1.7 million. Phase I is shown in Table One as allowing $200,000. This should be increased to $400,000 based on $4 per sq.ft.

Community Park: $6.88 per square foot appears acceptable. Accordingly, Community Park would be estimated at about $2 million. This, of course, does not include any possible structures we may consider for this Park.

Tower Park West: $35 per square foot appears to be very high since Trinity Square was completed at $26 per square foot. Unless there is a specific advantage for the City to estimate Tower Park West at this figure, I would suggest that $30 per square foot be used, reducing the overall figure from $1.4 to 1.2 million.

John Street Corridor: I assume that $40 per square foot includes the steps and some bridging work, which would be reasonable. Otherwise, the figure could be reduced to $35 per sq.ft. reducing the overall figure from $2.2 million to $1.925 million.

Hi Line and Linear Parks: $7.47 per square foot appears to be low, especially if you take into account steps and retaining walls. Conservatively, I would estimate this at double CN´s estimate ($15 per sq.ft.).

Page 70 - Section 7.03 - Parks Construction

Cn indicates that it will be responsible for Stage I construction of Tower Park East to the extent that it will remove the existing park surfaces and non-park related facilities. This should be expanded upon to include that they will place the park into a sodded condition. CN also proposes to limit our ability to construct Community Park if our "bid isn´t competitive with other bids that CN receives.

The agreement should allow for a process whereby I have the right to build a City park notwithstanding the lowest bid. Similarly, the process should also be applicable to the planting of trees on streets. If the final approval rests with me, why is an arbitration process proposed?

Page 72 - Section 7.05 - Landscaping Costs

While I agree to the process of monthly payments, no payment is to begin until at least January 1, 1987.

Page 84 - Section 10.01 - Heritage. The Agreement acknowledges the City's policy to incorporate heritage aspects into the parks. I am dubious about the rail spur through Tower Park East. It certainly will pose a problem for any proposal for an amphitheatre at the proposed site. It will also be a challenge for any designer to make it work properly within the park. How will it affect the substructures? How will it cross The Esplanade? How is it to be paid for? Who will maintain it? This has not been made clear.

Page 86 - Section 10.01 - Public Art

I would like to have input into the incorporation of public art in any publicly accessible open space. Any art placed into a public park will remain the responsibility of the City.

Schedule 13A - Cost Apportionment of Major Infrastructure Elements on Railway Lands

The breakdown of the cost apportionment for the streets should be footnoted with a statement that the overall costs for all the street will represent a 75%-25% arrangement in the City's favour. Item 14 requires substantial clearing up. Tower Park East should be broken down into two phases with CN paying 100% of Phase I and a 75%-25% arrangement in the City's favour.

The memorandum of Conditions referred to John Street Corridor as a 50%-50% cost arrangement. Tower Park West was not included; however, I am now to understand that Tower Park West is reflected in Schedule E to the Memorandum as being part of the John Street Corridor.

This is inconsistent with Schedule 13B which appoints Tower Park West with a 75%-25% arrangement in the City's favour.

Schedule 13B - Table One - Infrastructure and Parks Costs

Do the Figures represented under the City's contribution in the Infrastructure Section of Table One reflect any landscaping costs for the streets? If so, what are they and how were they derived? We estimate that tree planting on the streets in Precinct A will cost approximately $360,000. Retaining walls are budgeted at $53,000 under CN's responsibility. I suggest that this should be reviewed with my comments respecting the grade level of Northerly Linear Park. I have some doubts that the Linear Park retaining wall is included in this. Similarly, the park corridor's budget should be reviewed with my comments respecting Linear Park.

CN have included the item "Royal Bank Park Revision" with the City and CN sharing the costs on a 50%-50% basis. This is not referred to in previous discussions and I suggest that these revisions are made to accommodate Stadium related pedestrian circulation. Accordingly, CN should be responsible for 100% of the costs.

Tower Park East Phase II and Community Park should be listed in this schedule.

It would also be useful to tie the cost apportionment schedule to the phasing schedule.

If you have any questions regaridng my comments in this letter, please contact John Jung at 392-7251. Signed: Herb Pirk

Letter from Department of Public Works dated March 5, 1986

I have reviewed the Precinct Agreement, contained in the Railway Lands Part II Report, and have the following comments:

1. Page 13, Clause (c)

   This clause appears to be incomplete.

2. Page 18 - Definition of Spadina LRT

   In order to avoid difficulties arising out of the definition of an LRT, as contained in the Metro Official Plan, I would suggest the following definition:

   "Spadina LRT" means a transit facility proposed for Spadina Avenue.

3. Page 30, Clause 3.02(d)

   Given that the Consulting Engineer retained is to do everything that is necessary to bring about the total completion of the infrastructure, including the preparation of the necessary contracts for the infrastructure, I have some difficulty in understanding the rational of having such Consulting Engineer reviewing and approving the necessary contracts prepared by him in the first place.

   It would seem to me that Item (d) in Section 3.02 should be deleted.

4. Page 32, Clause 3.02(2)

   The first sentence of this item should read as follows:

   "Each Consulting Engineer shall be selected by CN, in consultation with the Commissioner of Public Works, from a list previously submitted and..."

5. Page 35, Clause 3.03(3)

   The latter part of this clause states that the City shall be responsible for all additional costs that will arise by virtue of the Commissioner of Public Works having altered construction standards and specifications subsequent to awarding a contract.

   As you are aware, standards and specifications are put in place for the purpose of ensuring a certain level of service, as well as satisfying, among other things, safety requirements. In my view, any changes made to standards and specifications at any time in the life of a contract should be cost shareable in the same manner as provided for in the Agreement in that the alterations will only be necessitated by a determination that the current standards and specifications are not adequate.

6. Page 38, Clause 3.05(2)

This clause should be made clear to the effect that it only applies to elements of the infrastructure paid in whole by CN.

As you know, my position has been consistently against CN having "complete control and discretion over all matters relating to the construction of the infrastructure..." as it pertains to the elements of the infrastructure that are cost shareable by the City.

7. Page 44, Clause 3.09(1)

Insert after the word "drawings" on line 9, page 44, the words "and contract documents".

8. Page 50, Clause 3.11(1)

Change the 30 days at the top of page 50 to 60 days.

9. Page 52, Clause 3.11(5)

This clause, as it reads, is acceptable. I should clarify, however that the words "as soon as possible", as they appear in the 5th and 7th lines of the clause, refer not only to the time required in respect of procedural processes that must be followed but also to the capability of each element of the infrastructure to be assumed independent of the overall completed system.

10. Page 62, Clause 4.02(2)

The portion of the sentence contained in brackets in the 3rd and 4th lines of the clause on page 62 should be deleted in that it may present certain legal difficulties on the part of the City paying its share of the cost directly to the contractor.

11. Page 76, Clause 5.10(4)

I have some concern with the sentence of this clause starting with the words "nothing in this Section 5.10(4)...".

While I recognize CN's concerns of being held responsible for the costs of such improvements, I feel that this last sentence should be modified to allow for some future determination for a proper apportionment of the costs among all parties and in a manner as properly identified through the studies.

12. Page 168, Clause 11.03(b)

The City Clerk's Office is located on the second floor of City Hall and not the 20th floor of the East Tower as indicated.

1.3 Schedule N3 - Parks and Infrastructure Schedule

This Schedule indicates that work pertaining to Spadina is to be completed in 1989.

This is not consistent with the Agreement that stipulates that all work pertaining to Spadina, including its connections with The Esplanade, should be in place by the opening date of the Stadium.

Should you have any questions, on the foregoing, please contact Mr. N. Vardin of my staff.

Letter from Metropolitan Planning Department dated February 28, 1986

We are generally in agreement with your report indicating that the "conditions" in our report dated January 29, 1986 are adequately addressed in the Precinct Agreement, with the obvious exception of a requirement for staging development prior to a commitment to the Spadina LRT. In view of the uncertainties of timing and methods of implementation for certain required facilities, we are submitting the following comments to clarify our position, which in some cases, suggest rewording of the Agreement.

1. There is a potential inconsistency between:

   (a) the various sections of Article V, which require the Spadina Avenue improvements between Front Street and Lake Shore Boulevard, including the Spadina/Esplanade and Spadina/Lake Shore intersections to be completed and operational before the Stadium opening date; and

   (b) Schedule N3, which indicates that the two intersections and intervening section of Spadina will not be complete until 1989, after the opening date.

   We understand that this inconsistency reflects the uncertain timing of the Hi-Line relocation, which is required to facilitate improvements at the south end of Spadina. Accordingly, it is also our position that the Spadina/Esplanade connection should not be made until the Spadina/Lake Shore improvements are also in place, these being required to accommodate traffic generated by any precinct development in excess of 250,000 square feet.

   With regard to Section 5.03(2), we would like to note that the Metropolitan Commissioner of Roads and Traffic will consult with the Toronto Transit Commission General Manager regarding grade requirements for the Spadina LRT.

2. The relocation of the Hi-Line also affects the scope of improvements at the John/Lake Shore intersection, including the provision of a grade separated pedestrian crossing (as acknowledged on Page 47 of your report). The alternative three-lane and five-lane widenings of John are provided for in Section 5.04 of the Agreement, but there should be provision and assignment of responsibility for the pedestrian grade separation in anticipation that the Hi-Line will be relocated (as per other improvements affected by the Hi-Line).

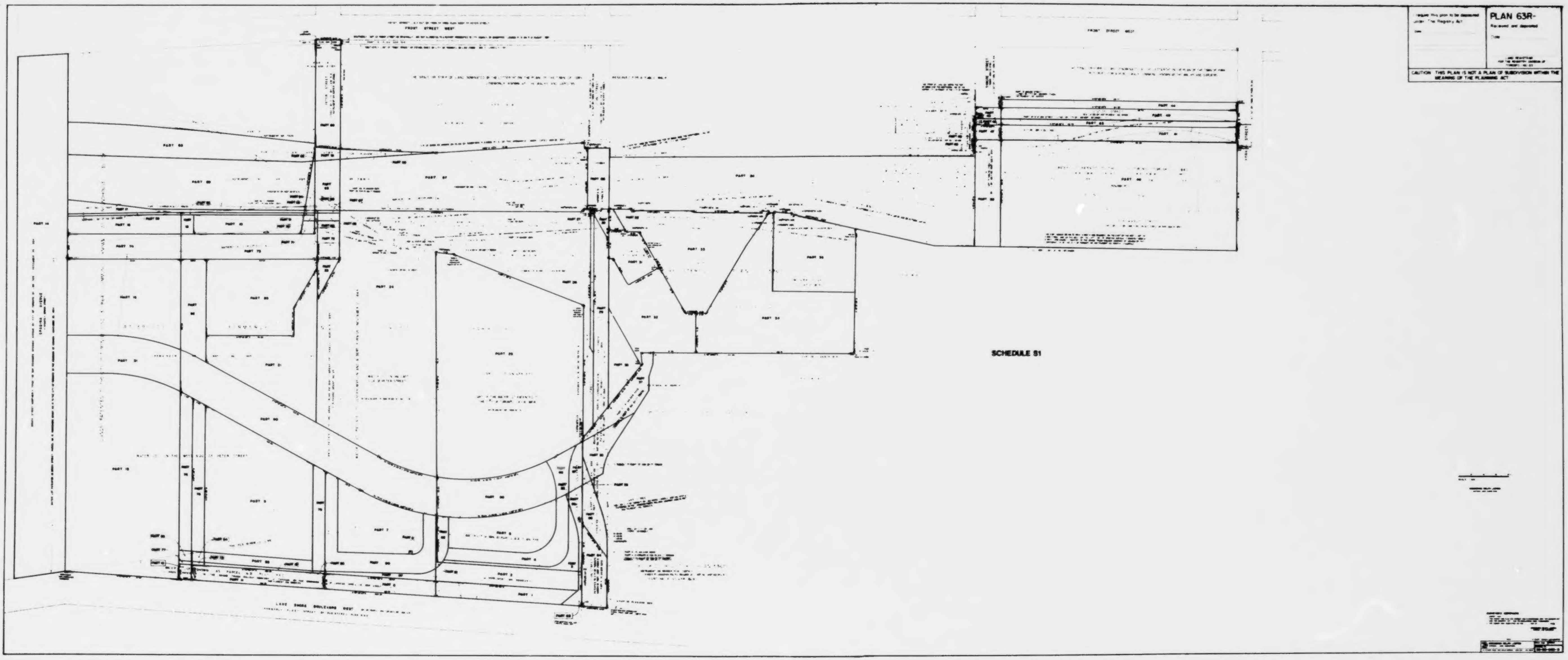
   With regard to Section 5.04(2), we should like to note that the absence of a direct reference does not preclude the need for approval by the Metropolitan Commissioner of Roads and Traffic of the design of the three-lane configuration.

3. Section 5.10(2) provides an option for the City to require a landscaped median on The Esplanade, as shown on Schedule "E", and an option for the median to be available for a transit right-of-way. As we have advised previously, the Toronto Transit Commission requirement for a transit median would be in excess of the width shown in Schedule "E".

4. Although Schedule "M" indicates a pedestrian bridge across York Street and the Schedule is the basis on which CN is required to provided the pedestrian walkway described in Section 5.15(1), we would suggest that the descriptions in (I), (II), (III), which end with "easterly to York Street", be changed to "easterly to a pedestrian bridge across York Street into Union Station".

The above comments relate to matters raised in our January 29, 1986 report. We are still checking with other Metropolitan Departments regarding these sections of the Agreement which obligate CN to produce its agreements with Metropolitan Toronto relating infrastructure improvements including, for example, the construction of the Pumping Station and leasing in the Hi-Line for the South Linear Park.

We shall forward any further comments as soon as possible.
Signed R.J. Bower


I require this plan to be deposited under The Registry Act
Date
PLAN 63R-
Received and deposited
Date
Land Registrar for the Registry Division of Toronto (No. 63)
CAUTION THIS PLAN IS NOT A PLAN OF SUBDIVISION WITHIN THE MEANING OF THE PLANNING ACT
FRONT STREET WEST
LAKE SHORE BOULEVARD WEST
SCHEDULE S1

SCHEDULE 1

I require this plan to be deposited under The Registry Act

Date ______

PLAN 63R-

Received and deposited

Date ______

LAND REGISTRAR FOR THE REGISTRY DIVISION OF TORONTO (No. 63)

CAUTION THIS PLAN IS NOT A PLAN OF SUBDIVISION WITHIN THE MEANING OF THE PLANNING ACT

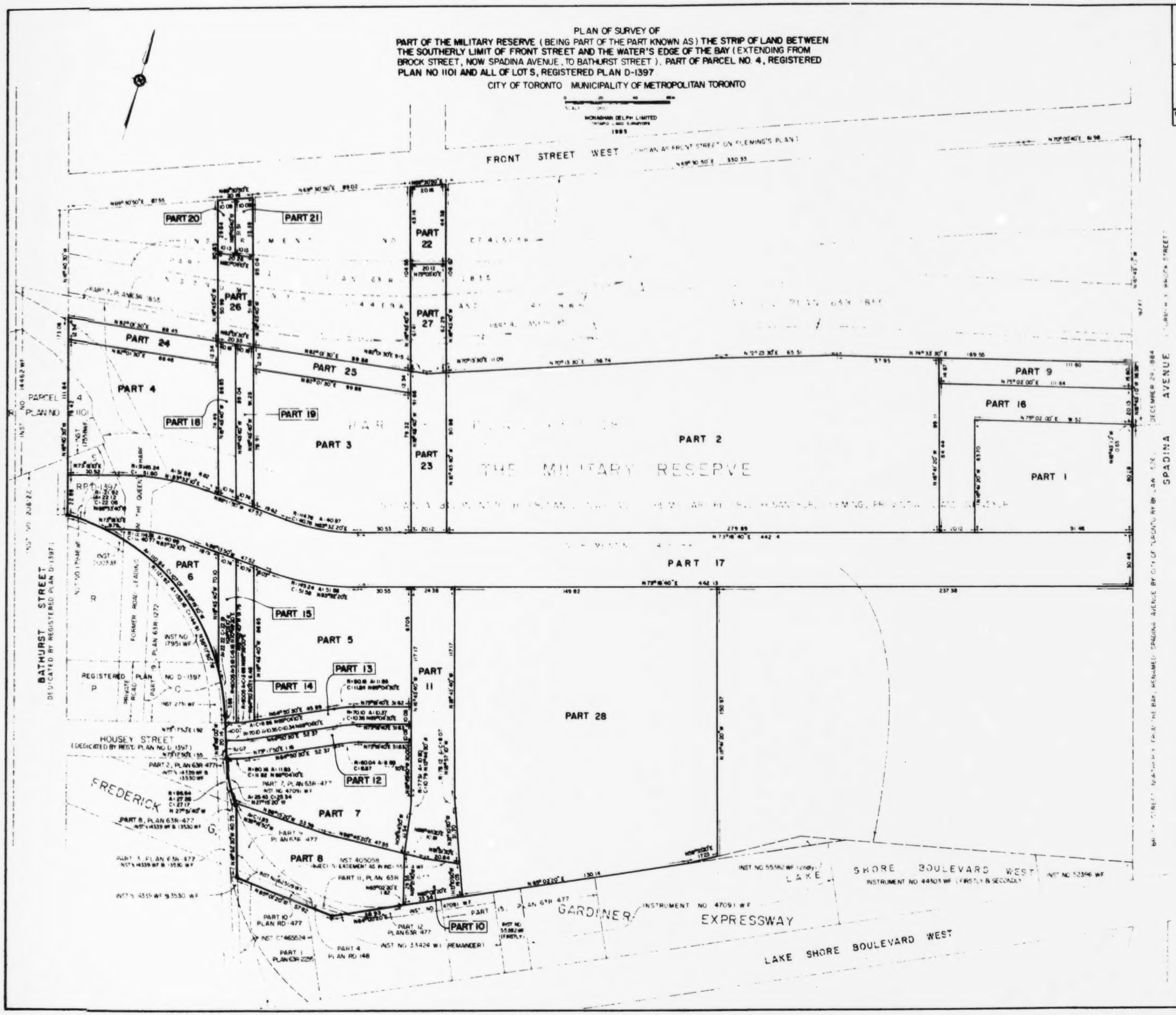
SCHEDULE S2

PLAN OF SURVEY OF

PART OF THE MILITARY RESERVE (BEING PART OF THE PART KNOWN AS) THE STRIP OF LAND BETWEEN THE SOUTHERLY LIMIT OF FRONT STREET AND THE WATER'S EDGE OF THE BAY (EXTENDING FROM BROCK STREET, NOW SPADINA AVENUE, TO BATHURST STREET). PART OF PARCEL NO. 4, REGISTERED PLAN NO 1101 AND ALL OF LOT S, REGISTERED PLAN D-1397

CITY OF TORONTO MUNICIPALITY OF METROPOLITAN TORONTO

MONAGHAN DELPH LIMITED
ONTARIO LAND SURVEYORS
1985



0 20 40 60m
SCALE
FRONT STREET WEST (SHOWN AS FRONT STREET ON FLEMING'S PLAN)
PART 1
PART 2
PART 3
PART 4
PART 5
PART 6
PART 7
PART 8
PART 9
PART 10
PART 11
PART 12
PART 13
PART 14
PART 15
PART 16
PART 17
PART 18
PART 19
PART 20
PART 21
PART 22
PART 23
PART 24
PART 25
PART 26
PART 27
PART 28
THE MILITARY RESERVE
PARCEL 4 PLAN NO 1101
BATHURST STREET (DEDICATED BY REGISTERED PLAN D-1397)
REGISTERED PLAN NO D-1397
HOUSEY STREET (DEDICATED BY REG'D PLAN NO D-1397)
FREDERICK
FORMER ROAD LEADING TO THE QUEEN'S WHARF
SPADINA AVENUE
DECEMBER 29, 1884
NOVEMBER 28, 1894
LAKE SHORE BOULEVARD WEST
GARDINER EXPRESSWAY
LAKE SHORE BOULEVARD WEST
INSTRUMENT NO 44301 WF (FIRSTLY & SECONDLY)
INSTRUMENT NO 47091 WF

SCHEDULE OF AREAS

Part	Area
1	5,702 m²
2	2.720 ha
3	7,362 m²
4	6,315 m²
5	6,385 m²
6	1,629 m²
7	4,718 m²
8	3,895 m²
9	1,689 m²
10	781 m²
11	3,817 m²
12	1,067 m²
13	1,071 m²
14	898 m²
15	895 m²
16	3,533 m²
17	1.860 ha
18	884 m²
19	907 m²
20	308 m²
21	326 m²
22	880 m²
23	1,826 m²
24	1,079 m²
25	1,097 m²
26	1,032 m²
27	1,255 m²
28	2.436 ha
TOTAL	12 95 ha

SURVEYOR'S CERTIFICATE

I CERTIFY THAT

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT AND THE REGISTRY ACT AND THE REGULATIONS MADE THEREUNDER.
2. THE SURVEY WAS COMPLETED ON THE ____ DAY OF ______ 1985

MONAGHAN DELPH LIMITED
ONTARIO LAND SURVEYORS

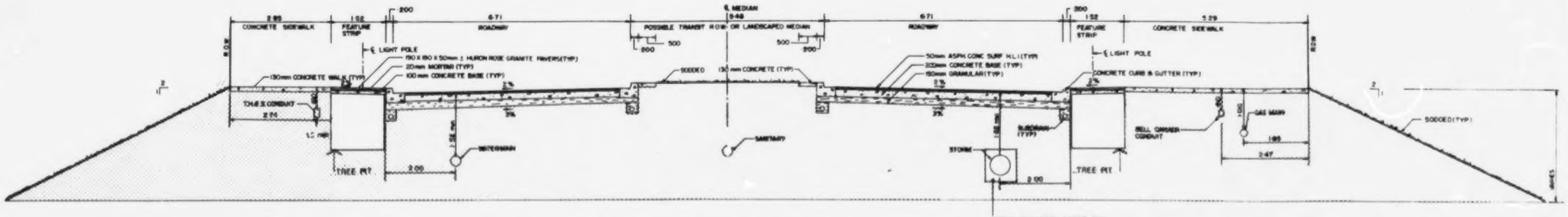
DATE

P. B. DELPH ONTARIO LAND SURVEYOR

MONAGHAN DELPH LIMITED
ONTARIO LAND SURVEYORS
44 UPJOHN ROAD DON MILLS ONTARIO M3B 2W1

Drawn	Checked
RDS	

Drawing No
30-85-063-6B


2·85
CONCRETE SIDEWALK
1·52
FEATURE STRIP
200
6·71
ROADWAY
℄ MEDIAN
9·48
POSSIBLE TRANSIT R.O.W. OR LANDSCAPED MEDIAN
200
500
500
200
6·71
ROADWAY
200
1·52
FEATURE STRIP
5·29
CONCRETE SIDEWALK
R.O.W.
℄ LIGHT POLE
190 X 190 X 50mm ± HURON ROSE GRANITE PAVERS(TYP)
20mm MORTAR (TYP)
100mm CONCRETE BASE (TYP)
130mm CONCRETE WALK (TYP)
SODDED
130mm CONCRETE (TYP)
50mm ASPH CONC SURF H.L.1 (TYP)
200mm CONCRETE BASE (TYP)
150mm GRANULAR (TYP)
℄ LIGHT POLE
CONCRETE CURB & GUTTER (TYP)
2%
3%
T.H.E.S. CONDUIT
2·74
1.2 min
TREE PIT
2·00
WATERMAIN
SANITARY
STORM
SUBDRAIN (TYP)
TREE PIT
2·00
BELL CANADA CONDUIT
GAS MAIN
1·65
2·47
SODDED (TYP)
2
1
VARIES

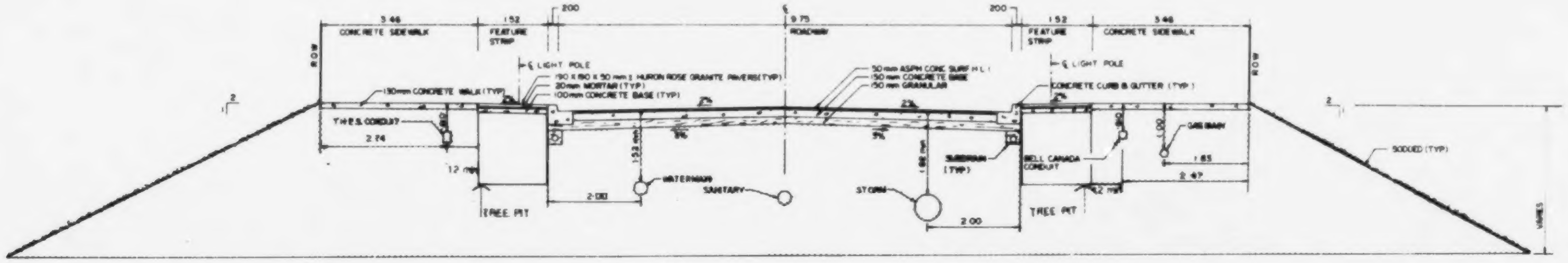
CITY SHARES COST ON INSTALLATION OF STORM SEWER

TYPICAL CROSS SECTION (THE ESPLANADE)

30·48M R.O.W.

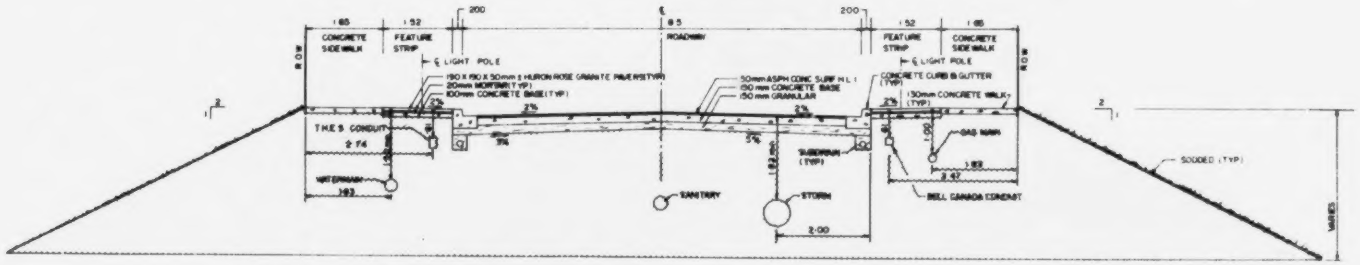
TREE PITS AND UNDERGROUND SERVICES TO BE LOCATED AS PER APPROVED DEPARTMENT OF PUBLIC WORKS CROSS SECTIONS SHOWING A 1.2 m SEPARATION BETWEEN THESE TWO ELEMENTS OF INFRASTRUCTURE

GRANULAR B FILL OR AS APPROVED BY THE COMMISSIONER OF PUBLIC WORKS


3·46
CONCRETE SIDEWALK
1·52
FEATURE STRIP
200
℄
9·75
ROADWAY
200
1·52
FEATURE STRIP
3·46
CONCRETE SIDEWALK
ROW
℄ LIGHT POLE
190 X 190 X 50 mm ± HURON ROSE GRANITE PAVERS(TYP)
20mm MORTAR (TYP)
100mm CONCRETE BASE (TYP)
130mm CONCRETE WALK (TYP)
50mm ASPH CONC SURF H.L.1
150mm CONCRETE BASE
150mm GRANULAR
℄ LIGHT POLE
CONCRETE CURB & GUTTER (TYP)
2%
3%
T.H.E.S. CONDUIT
2·74
1.2 min
TREE PIT
2·00
WATERMAIN
SANITARY
STORM
SUBDRAIN (TYP)
BELL CANADA CONDUIT
TREE PIT
2·00
GAS MAIN
1·65
2·47
SODDED (TYP)
2
1
VARIES

TYPICAL CROSS SECTION (LOCAL STREET)

20·11 M R.O.W.


1·65
CONCRETE SIDEWALK
1·52
FEATURE STRIP
200
℄
8·5
ROADWAY
200
1·52
FEATURE STRIP
1·65
CONCRETE SIDEWALK
ROW
℄ LIGHT POLE
190 X 190 X 50mm ± HURON ROSE GRANITE PAVERS(TYP)
20mm MORTAR (TYP)
100mm CONCRETE BASE (TYP)
50mm ASPH CONC SURF H.L.1
150mm CONCRETE BASE
150mm GRANULAR
℄ LIGHT POLE
CONCRETE CURB & GUTTER (TYP)
130mm CONCRETE WALK (TYP)
2%
3%
T.H.E.S. CONDUIT
2·74
WATERMAIN
1·93
SANITARY
STORM
2·00
SUBDRAIN (TYP)
GAS MAIN
1·83
2·47
BELL CANADA CONDUIT
SODDED (TYP)
2
1
VARIES

TYPICAL CROSS SECTION (LOCAL STREET)

15·24M R.O.W.

NOTE: NO STREET TREES ON 15.24 R.O.W.

FORMERLY 2F

COST SHARING OF ROADS IS AS OUTLINED IN THE PRECINCT AGREEMENT

SCALE

general notes

THIS PLAN IS INTENDED TO SHOW LEVEL ABOVE WICH THE CITY SHARES INFRASTRUCTURE COSTS

FEBRUARY 4 1986
FEBRUARY 3 86
JANUARY 20 86
January 10 86

No.	date	by	revision
3	FEB 4 1986	JCB	WATERMAIN, [illegible] ROW REVISED
2	FEB 3/1986	PS	BELL CANADA & T.H.E.S. CONDUIT REVISED
1	DEC 1985	[illegible]	TREE PITS

IBI
GROUP
BIA
Beinhaker/Irwin Associates
Architects, Engineers, Planners

156 Front St. West 6th floor Toronto, Ont. M5J 2L6 (416) 596-0475

CN Real Estate Immeubles

project title

RAILWAY LANDS
STADIUM PRECINCT
'A'

sheet title

TYPICAL ROAD
CROSS SECTIONS

scale 1:500	date Dec./1985
drawn PS.	checked R.F. Dore C.B.
project no. TO-2113	sheet no. SCHEDULE E

[illegible]

FEBRUARY 19 1986

C.N. REAL ESTATE
RAILWAY LANDS

PARKS AND INFRASTRUCTURE SCHEDULE

ACTIVITY	1986												1987												1988											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Minor Municipal (Underground Services)							####	####	####	####	####																									
#Peter Street							####	####																												
Unnamed Cul-de-Sac	Built as required																																			
#The Esplanade									####	####																										
#John Street										####	####																									
#Unnamed Loop Road										####	####																									
Roadworks						####	####	####	####	####	####	####	####			####	####	####	####																	
#Peter Street												####	####			####																				
Unnamed Cul-de-Sac	Built as required																																			
#The Esplanade																		####	####																	
#John Street										####	####						####																			
#Unnamed Loop Road																		####																		
Spadina Ave																																				
-Peter to Lakeshore # (4 lanes)						####	####	####	####	####	####																									
-Connect Spadina with Esplanade	(for Stadium opening)																																			
-Esplanade to Lakeshore (6 lanes)	(for Stadium opening)																																			
-Improvements Spadina/Lakesh ramps (1989)																																				
Lighting & landscaping																												####		####	####	####	####			
#Peter Street																												####								
Unnamed Cul-de-Sac	Built as required																																			
#Unnamed Loop Road																														####						
#John Street																															####					
#The Esplanade																																####				
#Spadina Ave																																	####			

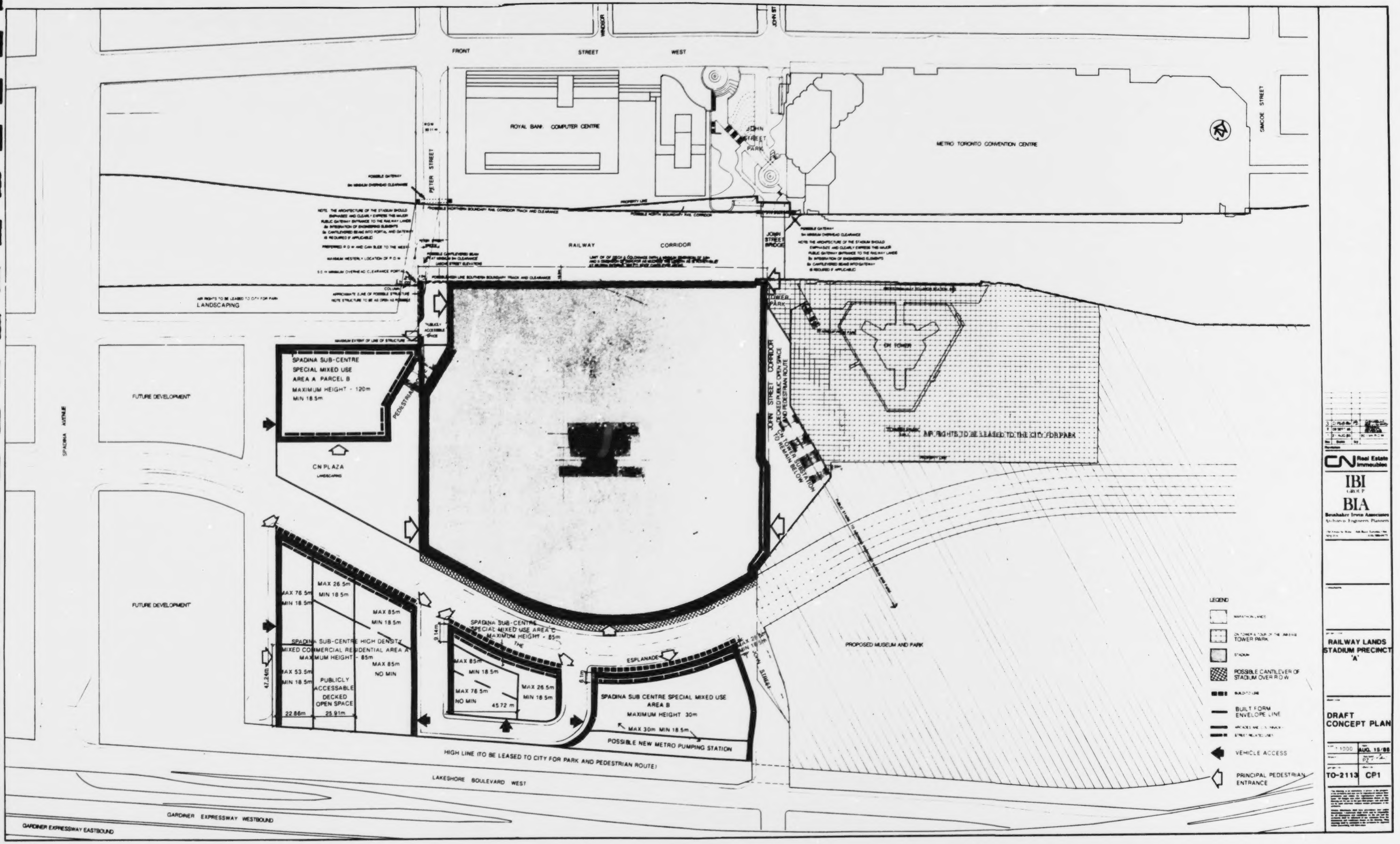
CONTINUED ON N4

SCHEDULE N3

CN Real Estate
Immeubles

IBI
GROUP
BIA
Beinhaker/Irwin Associates
Architects, Engineers, Planners

FEBRUARY 19 1986


FRONT STREET WEST
WINDSOR
JOHN ST
ROYAL BANK COMPUTER CENTRE
PETER STREET
JOHN STREET PARK
METRO TORONTO CONVENTION CENTRE
SIMCOE STREET
RAILWAY CORRIDOR
JOHN STREET BRIDGE
TOWER PARK
LANDSCAPING
PUBLICLY ACCESSIBLE SPACE
SPADINA SUB-CENTRE SPECIAL MIXED USE AREA A PARCEL B
MAXIMUM HEIGHT - 120m
MIN 18.5m
PEDESTRIAN
FUTURE DEVELOPMENT
SPADINA AVENUE
CN PLAZA
LANDSCAPING
CN TOWER
JOHN STREET CORRIDOR
AIR RIGHTS TO BE LEASED TO THE CITY FOR PARK
MAX 26.5m MIN 18.5m
MAX 76.5m MIN 18.5m
MAX 85m MIN 18.5m
SPADINA SUB-CENTRE HIGH DENSITY MIXED COMMERCIAL RESIDENTIAL AREA A
MAXIMUM HEIGHT - 85m
MAX 85m NO MIN
MAX 53.5m MIN 18.5m
PUBLICLY ACCESSABLE DECKED OPEN SPACE
22.86m
25.91m
47.24m
SPADINA SUB-CENTRE SPECIAL MIXED USE AREA C
MAXIMUM HEIGHT - 85m
MAX 85m MIN 18.5m
MAX 76.5m NO MIN
45.72m
MAX 26.5m MIN 18.5m
ESPLANADE
SPADINA SUB CENTRE SPECIAL MIXED USE AREA B
MAXIMUM HEIGHT 30m
MAX 30m MIN 18.5m
POSSIBLE NEW METRO PUMPING STATION
HIGH LINE (TO BE LEASED TO CITY FOR PARK AND PEDESTRIAN ROUTE)
LAKESHORE BOULEVARD WEST
GARDINER EXPRESSWAY WESTBOUND
GARDINER EXPRESSWAY EASTBOUND
PROPOSED MUSEUM AND PARK
LEGEND
TOWER PARK
POSSIBLE CANTILEVER OF STADIUM OVER R.O.W.
BUILT FORM ENVELOPE LINE
VEHICLE ACCESS
PRINCIPAL PEDESTRIAN ENTRANCE
CN Real Estate Immeubles
IBI GROUP
BIA
Bersnhaker Irwin Associates
Architects Engineers Planners
RAILWAY LANDS STADIUM PRECINCT 'A'
DRAFT CONCEPT PLAN
1:1000
AUG. 15/88
TO-2113
CP1

APPENDIX II

AGREEMENT made as of this 6th day of March, 1986.

B E T W E E N:

CANADIAN NATIONAL RAILWAY COMPANY

- and -

THE CORPORATION OF THE CITY OF TORONTO

STADIUM PRECINCT AGREEMENT

Weir & Foulds
Barristers and Solicitors
Suite 1600, Exchange Tower, Box 480
2 First Canadian Place
Toronto, Ontario
M5X 1J5

Blake, Cassels & Graydon,
Barristers and Solicitors,
P.O. Box 25,
Commerce Court West,
TORONTO, Ontario.
M5L 1A9.

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PRECINCT AGREEMENT

THIS AGREEMENT made as of the 6th day of March, 1986.

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY, a
company incorporated under a Special Act
of the Parliament of Canada,

(hereinafter called "CN")

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF TORONTO, a
municipal corporation incorporated under
the laws of the Province of Ontario,

(hereinafter called the "City")

OF THE SECOND PART

WITNESSES:

WHEREAS the City has adopted and enacted a Part II Plan for the Railway Lands which amends The Official Plan for the City of Toronto; and

WHEREAS the Part II Plan defines certain areas of the Railway Lands as precincts; and

WHEREAS the precinct referred to in the Part II Plan as Precinct "A" is herein described as the "Stadium Precinct"; and

WHEREAS CN has made application to the City for a rezoning of the Stadium Precinct in accordance with the Policies of the Part II Plan; and

WHEREAS this Agreement is entered into in fulfillment of the precondition set out in the Part II Plan for the enactment of a zoning by-law for the Stadium Precinct and in particular Section 11.12(o) thereof; and

WHEREAS this Agreement is the Precinct Agreement as defined in the Part II Plan to be entered into between CN and the City for the purpose of securing the provision to or for the City of the matters set out in the Precinct Plan for the Stadium Precinct; and

WHEREAS the City is authorized by the City of Toronto Act, 1971, S.O. 1971, Chapter 130 and more particularly by Section 16 thereof to enter into this Agreement with CN.*

NOW THEREFORE in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CN and the City hereby covenant and agree as follows:

ARTICLE I

INTERPRETATION

Section 1.01 - Definitions

Where used in this Agreement, unless the subject matter or context otherwise requires, the following terms shall have the following meanings:

(a) "Agreement", "this Agreement", "the Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions with respect to this agreement mean and refer to this agreement as amended from time to time and any indenture, agreement or instrument which by its terms is expressed to be supplemental or ancillary hereto or in implementation hereof, and the expressions "Article", "section" and "clause" followed by a number or letter mean and refer to the specified Article, section or clause of this Agreement;

(b) "Approved Completion Certificate" has the meaning set forth in Section 3.11(1);

(c) "Approved Construction Drawings" has the meaning set forth in Section 3.04(2);

(d) "Approved Standards and Specifications" has the meaning set forth in Section 3.03;

(e) "Arbitrations Act" means the Arbitrations Act (Ontario), R.S.O. 1980, chapter 25, as it may be amended from time to time;

(f) "Business Day" means any day which is not a Saturday, Sunday or statutory holiday in the Province of Ontario;

(g) "City" means the Corporation of the City of Toronto;

(h) "City Contribution Factor" has the meaning set forth in Section 4.01;

(i) "City Council" means the body made up of persons holding the position of aldermen in the City from time to time;

(j) "City Housing Authority" has the meaning set forth in Section 8.04;

(k) "City Housing Lands" means the lands to be conveyed by CN to the City or other authority in accordance with Article VIII hereof, including without limitation the Phase I Housing Lands;

(l) "City Infrastructure Cost" has the meaning set forth in Section 4.01;

(m) "CN" means Canadian National Railway Company, a company incorporated under a Special Act of the Parliament of Canada, and its successors and assigns;

(n) "CN Designated Failure" has the meaning set forth in Section 3.09(1);

(o) "CN Plaza" means the portion of the Stadium Precinct owned and to be owned by CN shown on Schedule "H" hereto and designated as Parts 21 and 23 on Schedule "S-1" hereto;

(p) "CN Plaza Agreement" means the agreement referred to in Section 6.10;

(q) "CN Terminal Building" means the four-storey brick building operated by CN on the south side of the open portion of Station Street extending from York Street to and including lands west of Simcoe Street (also known as the "CN Express Building"), shown on Schedule "M" hereto and situate on the lands designated as Parts 41, 42, 46, 47 and 48 on Schedule "S-1" hereto;

(r) "Commencement Date" has the meaning set forth in Section 2.01;

(s) "Commissioner of Public Works", "Commissioner of Planning and Development", "Commissioner of Parks and Recreation", "Commissioner of Housing", "City Treasurer" and "City Solicitor" respectively means the person holding the office in the City from time to time so designated or as such designation may be changed by the City from time to time and each of such persons is herein referred to as a "City Official";

(t) "Community Park" means the proposed city park to be constructed on the lands forming part of the Railway Lands and comprising the lands designated as Part 2 on Schedule "S-2" hereto;

(u) "Community Park Lands" means the lands referred to in Section 6.07(1);

(v) "Completion Certificate" has the meaning ascribed to it in Section 3.11(1) hereof;

(w) "Concept Plan" and Amended Concept Plan have the meanings set forth in Section 11.07;

(x) "Construction Lien Act" means the Construction Lien Act, 1983, S.O. 1983, c.6 or such successor legislation as may be in force in the Province of Ontario from time to time;

(y) "Consulting Engineer" has the meaning set forth in Section 3.02;

(z) "Consulting Landscape Architect" has the meaning set forth in Secton 7.01 hereof;

(aa) "CP" means Canadian Pacific Limited, a company incorporated under the laws of Canada and its successors and assigns;

(bb) "CP Lands" means the lands described in Section 6.11;

(cc) "Development Review Process" means the site plan approval process contemplated by Section 40 of the Planning Act;

(dd) "Development Site" means any lot or parcel of land within any precinct with respect to which an application has been made for site plan approval pursuant to Section 40 of the Planning Act;

(ee) "Environmental Report" means the report entitled "Railway Lands Precinct 'A' Plan Environmental Report" prepared by IBI and dated May, 1985, January 3, 1986 and February 3, 1986;

(ff) "Environmental Agreement" means the agreement dated as of the date hereof to be entered into between CN and the City in respect of environmental matters relating to the Stadium Precinct;

(gg) "Esplanade" has the meaning set forth in Section 5.02(1)(e);

(hh) "Final Acceptance Certificate" has the meaning set forth in Section 3.11(3);

(ii) "Final Completion Certificate" has the meaning set forth in Section 4.02(1);

(jj) "Final List of Deficiencies" has the meaning set forth in Section 3.11(1);

(kk) "Hearing Date" has the meaning set forth in Section 5.11(4);

(ll) "Hi-Line Railway" has the meaning set forth in Section 6.03(3);

(mm) "Holdback" has the meaning set forth in Section 3.06(1);

(nn) "Infrastructure" means the aggregate of the Infrastructure Elements;

(oo) "Infrastructure Cost" means the aggregate of the Infrastructure Element Costs;

(pp) "Infrastructure Element" means each of the Municipal Services (which includes the Storm Sewers), the John Street Sewer Outfall, the Streets, the Pedestrian Walkway (if required to be constructed in accordance with Section 5.15), the John Street Bridge and the Peter Street Bridge;

(qq) "Infrastructure Element Cost" means the cost of design, supervision, the Consulting Engineer, construction, insurance obtained pursuant to Section 13.12, labour, materials and installation and any other costs contemplated by this agreement of construction (excluding the administrative and overhead costs of CN and the City) of any Infrastructure Element in accordance with the provisions of this Agreement;

(rr) "Infrastructure Phasing Schedule" means the proposed schedule for the completion of the Infrastructure

Elements, the present form of which is included as Schedules "N1", "N2", "N3", "N4" and "N5" hereto, as it may be amended from time to time by agreement among the parties hereto or by virtue of any delay arising pursuant to Section 11.01 hereof;

(ss) "John Street" * has the meaning set forth in 5.02(1)(d);

(tt) "John Street Bridge" means the proposed new pedestrian bridge across the Rail Corridor to be located as the southerly extension of the closed portion of John Street south of Front Street West, Toronto, from the northerly boundary of the Rail Corridor to the southerly boundary of the Rail Corridor, shown on Schedules "M", "Q" and "R" hereto and to be constructed within the lands designated as Part * 56 on Schedule "S-1" hereto, together with all necessary footings, pilings, and supports, some of which may be located on the lands designated as Parts 24, 26, 27 and 28 on Schedule "S-1" hereto;

(uu) "John Street Corridor" means the portion of the proposed pedestrian corridor shown on Schedules "I" and "J" hereto and to be constructed within the lands designated as Parts 26, 29 and 30 inclusive on Schedule "S-1" hereto;

(vv) "John Street Park" has the meaning set forth in Section 6.13(1);

(ww) "John Street Railway Bridge" has the meaning set forth in Section 6.03(5);

(xx) "John Street Storm Sewer" means the John Street storm sewer outfall shown on Schedule "C" hereto, and included as one of the Municipal Services;

(yy) "JSC Agreement" means the agreement referred to in Section 6.04(3);

(zz) "JSC Lands" means the lands described in Section 6.04;

*<

(aaa) "Local Streets" means the streets to be constructed and located adjacent to proposed development within the Railway Lands and not appearing on Appendix D to City of Toronto By-law 612-85 (and if such Bylaw is so amended including that portion of the unnamed north-south street between Portland Street and Bathurst Street north of Esplanade and south of the Rail Corridor) and shall have the same meaning as secondary streets in the Part II Plan;

(bbb) "Loop Street" has the meaning ascribed thereto in Section 5.02(1)(f);

(ccc) "Marathon" means Marathon Realty Company Limited, a corporation incorporated under the laws of Ontario, and its successors and assigns;

(ddd) "Memorandum of Conditions" means the Memorandum of Conditions attached as Appendix A to the Part II Plan.

(eee) "Metro" means The Corporation of the Municipality of Metropolitan Toronto;

(fff) "Municipal Act" means the Municipal Act (Ontario), R.S.O. 1980, c. 302 or such successor legislation as may be in force in the Province of Ontario from time to time;

(ggg) "Municipal Services" has the meaning set forth in Section 5.06(1);

(hhh) "New Pumping Station" has the meaning set forth in Section 6.03(7);

(iii) "New Spadina Avenue Bridge" means the new bridge proposed to be constructed as a Metro project to replace the existing Spadina bridge and to be located above the Spadina Avenue road allowance south from Front Street West meeting the reconstructed Spadina Avenue to the north of Lakeshore Boulevard West, all as contemplated in Section 5.03 hereof;

(jjj) "NLP - Phase I" has the meaning set forth in Section 6.02(2);

(kkk) "NLP Retaining Wall" has the meaning set forth in Section 6.02(5);

(lll) "Northern Linear Park" means the proposed linear park immediately to the south of the Rail Corridor between Peter Street and Spadina Avenue, shown on Schedule "L" and being the lands designated as Parts 16, 18,^* 19, 52 and 53 On Schedule "S-1" hereto, together with Parts 51, 70 and 71 on Schedule "S-1" hereto in the event such Parts 51, 70 and 71 are not required by^* the Commissioner of Public Works for Peter Street or the Peter Street Bridge;

(mmm) "Notice of Acceptance" has the meaning set forth in Section 3.11(1);

(nnn) "Notice to Correct Work" has the meaning set forth in Section 3.09;

(ooo) "OMB" means any panel of the Ontario Municipal Board duly constituted under the Ontario Municipal Board Act, R.S.O. 1980, as amended, or any panel duly constituted under such successor legislation to the Ontario Municipal Board Act as may be in force in the Province of Ontario from time to time;

(ppp) "OMB Hearing" means the hearing of the OMB to consider approval of the Stadium Precinct By-law;

(qqq) "Order Date" means the date of issuance of the order of the Ontario Municipal Board in respect of approval of the Stadium Precinct By-law;

(rrr) "Park Development Costs" has the meaning set forth in Section 7.05(1);

(sss) "Park Improvements" means the Park improvements to be constructed as part of the development of the Stadium Precinct as set forth in Articles VI and VII;

(ttt) "Park Infrastructure" means the Park ^* Improvements for each of the Parks, John Street Corridor, CN Plaza and the John Street Park and the NLP Retaining Wall;

(uuu) "Park Lease" in respect to any lands intended to be conveyed to the City by CN as a Park means a lease from CN to the City of the surface and other rights to the lands required by the provisions hereof to be included in such lease for the purpose of creating, operating and maintaining a public park for Park Uses, such lease to be substantially in the form of the lease annexed hereto as Schedule "W" and in respect of any Park shall include the provisions of each such demise as provided in Article VI and VII to the extent they apply to the particular Park mentioned therein;

(vvv) "Parks" means Tower Park East, Tower Park West, Northern Linear Park, Southern Linear Park and Community Park;

(www) "Park Security" has the meaning set forth in Section 7.12(1);

(xxx) "Park Uses" has the meaning set forth in Section 6.08;

(yyy) "Park Work" means the construction and installation of the Park Infrastructure or any part or parts thereof;

(zzz) "Part II Plan" means the amendment No. 333 to the Official Plan for the City of Toronto for the Railway Lands which was enacted by the City on August 17, 1985 by By-law No. 610-85 including any amendments or modifications from time to time;

(aaaa) "Pedestrian Walkway" means the pedestrian walkway to be constructed in accordance with Section 5.15;

(bbbb) "Permitted Encumbrances" with respect to any lands means as of any particular time all of the following encumbrances:

(a) liens for taxes, rates, assessments or governmental charges or levies not yet due and payable provided CN covenants to pay all such items;

(b) existing easements, rights-of-way, servitudes or other similar rights in lands or agreements (including, without in any way limiting the generality of the foregoing, rights-of-way and servitudes for sewers, drains, gas and oil pipelines, gas and watermains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables), granted to or reserved or taken by other persons, firms, corporations, utilities or other authorities which in the aggregate do not materially impair the usefulness of the lands for their intended purposes and would not prevent the City from legally accepting dedication or from assuming any Infrastructure Element or any of the Parks. If any such easements, rights-of-way, servitudes or other similar rights do legally prevent the City from accepting dedication or from assuming any interest in land, the City shall cooperate in using its powers of expropriation, to the extent that it is legally entitled, in order to remove any such matter, provided that CN indemnifies and saves the City harmless from all costs related to any such expropriation;

(c) the reservations, limitations, provisos and conditions, if any, expressed in any original grants from the Crown of any land or interests therein which do not materially impair the usefulness of the lands for their intended purposes and statutory exceptions to title;

(d) this Agreement and the Environmental Agreement (provided that CN shall be responsible for complying with the provisions of such Agreements) and any other agreements relating to the development of the Railway Lands to which the City is a party;

(e) such development agreements, easements, restrictions, leases, licences and documents creating rights of third parties which CN may after the date hereof grant or enter into and which are expressly contemplated by this Agreement and where appropriate by nature of the obligations, rights or restrictions contained therein have been previously approved by the City (except that where such agreements, easements, restrictions, leases, licences and documents are encumbrances against any of the Streets in respect of which the City is legally unable to accept dedication, the terms of such agreements, easements, restrictions, leases, licences or documents shall provide for their termination on conveyance to the City) and where not expressly approved by the City which in the aggregate do not materially impair the usefulness of the lands for their intended purposes;

(f) defects or irregularities of title which are of a minor nature and which do not in the aggregate impair the value of the lands or interfere with the use thereof for their intended purposes, provided CN has used its reasonable efforts to remove or remedy such defects or irregularities and if such defects or irregularities cannot be removed or remedied, CN shall indemnify the City from any claims arising from such defects or irregularities and the City shall on request of CN co-operate in using its powers of expropriation to the extent that it is legally entitled, in order to remove any such matter, provided that CN indemnifies and saves the City harmless from all costs related to any such expropriation;

(cccc) "Peter Street" has the meaning set forth in Section 5.02(1)(a);

(dddd) "Peter Street Bridge" means the proposed new pedestrian and vehicular bridge comprising the extension of Peter Street south of Front Street West and crossing the Rail Corridor and other lands as shown on Schedule "A" hereto and to be located within the lands designated as Parts 60, 61 and 63 on Schedule "S-1" hereto and within Parts 62 and * 64 * if * the Commissioner of Public Works should determine * that it is necessary to include such additional lands, together with all necessary footings, pilings and supports some of which may be located on Parts 65, 66 and 67 on Schedule "S-1" hereto;

(eeee) "Phase 1 Housing Lands" means the lands designated as Parts 3, 4, 6,*18, 19, 24 and 25 on Schedule "S-2" hereto and the portion of Part 15 abutting Part 6 on Schedule S-2;

(ffff) "Planning Act" means the Planning Act, 1983, S.O. 1983, chapter 1, or such successor legislation as may be in force in the Province of Ontario from time to time;

(gggg) "Precincts" means the areas identified as precincts shown on Map E to the Part II Plan, which areas are therein recognized as suitable for independent development in accordance with the policies and provisions of the Part II Plan, as such areas may be altered by amendment to the Part II Plan (including the proposed amendment to realign the precinct boundaries so that Precinct A (being the Stadium Precinct herein) will be as shown on Schedule "Q" hereto) or as permitted by Section 11.5 of the Part II Plan;

(hhhh) "Precinct Plan" means the document containing in graphic and written form the information required by Section 11.7 of the Part II Plan for each precinct and for the Stadium Precinct the information required by Section 11.12 of the Part II Plan, and which for the purposes of the Stadium Precinct is the document entitled "Railway Lands, Precinct 'A' By-law, Supporting Documentation dated September 1985" prepared by IBI Group as it may be amended from time to time in accordance with the Part II Plan and as amended by this Agreement;

(iiii) "Primary Streets" means the streets shown as Primary Streets on Appendix D to City of Toronto By-law 612-85, and if such Bylaw is so amended excluding that portion of the unnamed north/south street between Portland Street and Bathurst Street north of Esplanade and south of the Rail Corridor;

(jjjj) "Prime Rate" shall be deemed to mean the minimum lending rate of the Canadian Imperial Bank of Commerce for Canadian dollar commercial loans to its prime commercial customers at Toronto, Ontario, as the same may be varied by announcement of the said bank from time to time; ^*

(kkkk) "Progress Certificate" has the meaning set forth in Section 3.08;

(llll) "Pumping Station" has the meaning set forth in Section 6.03(7);

(mmmm) "Rail Corridor" means the lands owned by TTR forming part of the Railway Lands and used as a rail corridor for rail traffic, part of which is shown as Parts ^* 40, 50, 54, 56, 57, 59, 63, and 64 inclusive on Schedule "S-1"; ^*

(nnnn) "Railway Lands" means the lands in the City of Toronto shown within the solid dark line on Map B to the Part II Plan;

(oooo) "Release Date" has the meaning set forth in Section 6.01(7);

(pppp) "Replacement Value" means the cost of repairing, replacing or reinstating any item of property with materials of like kind and quality on the same or similar site without deduction for physical, accounting or any other depreciation;

(qqqq) "Royal" means the Royal Bank of Canada;

(rrrr) "Security" has the meaning set forth in Section 3.13;

(ssss) "Simcoe Street Tunnel" means the extension of Simcoe Street southerly from Front Street West to the south side of the Rail Corridor by way of a tunnel underneath the Rail Corridor and being within Parts 45, 46, 47, and 50, on Schedule "S-1";

(tttt) "SLP Lands" means the lands described in Section 6.03;

(uuuu) "Southern Linear Park" means the proposed linear park immediately to the north of Lakeshore Boulevard West shown on Schedule "L" hereto as High Line Berm and to be within the lands designated as Parts 1, 6, 11 and 12 on

Schedule "S-1" hereto and including the John Street Railway Bridge;

(vvvv) "Spadina Avenue Improvements" means the improvements to Spadina Avenue proposed as a Metro project to be constructed in accordance with Section 5.03(2) hereof, and to include without limitation the New Spadina Avenue Bridge;

(wwww) "Spadina LRT" means the * transit facility proposed for Spadina Avenue;

(xxxx) "Stadium" means the urban stadium and multi-purpose facility (as permitted by by-law) to be constructed by the Stadium Corporation within the Stadium Precinct, together with all accesses and contiguous amenities thereto;

(yyyy) "Stadium Corporation" means The Stadium Corporation of Ontario Limited, incorporated pursuant to the laws of the Province of Ontario, and its successors and assigns;

(zzzz) "Stadium Infrastructure Elements" means the Infrastructure Elements and Parks Infrastructure to be constructed prior to the Stadium Opening Date and listed in Section 5.01(2) hereof;

(aaaaa) "Stadium Opening Date" means the date on which the Stadium is scheduled to be opened to the public for commercial operation as a substantially completed urban stadium and multi-purpose facility as such scheduled date may be rescheduled to a different date from time to time by a notice or announcement from The Stadium Corporation or its authorized representatives;

(bbbbb) "Stadium Precinct" means the precinct within the Part II Plan shown as Precinct "A" on Schedule "Q" hereto;

(ccccc) "Stadium Precinct By-law" means the proposed zoning by-law of the City of Toronto permitting development within the Stadium Precinct in accordance with the Part II Plan in the form attached hereto as Schedule "V", subject to amendments approved by the City and CN;

(ddddd) "Station Street" means the lands designated as Parts 42, 43 and 44 on Schedule "S-1" hereto;

(eeeee) "Station Street Condition" has the meaning set forth in Section 6.01(7);

(fffff) "Storm Sewers" means the storm sewers shown on Schedule "C" hereto to be constructed as part of the Infrastructure and included in the Municipal Services;

(ggggg) "Streets" means Peter Street, the Unnamed Street, the Unnamed Cul-de-sac, John Street, Esplanade and Loop Street;

(hhhhh) "Tower Park East" means the proposed park shown as Tower Park East on Schedule "I" (Phase I to be completed by the Stadium Opening Date) and Schedule "J" (Phase II to be completed at a future date after the occurrence of certain events) and being the lands designated as Parts 34 and 35 on Schedule "S-1" hereto subject to the boundary revision contemplated in 6.06(5);

(iiiii) "Tower Park West" means the proposed park shown as Tower Park West on Schedule "I" (Phase I to be completed by the Stadium Opening Date) and Schedule "J" (Phase II to be completed at a future date after the occurrence of certain events) and being the land designated as Parts 22, 27, 28, 31 and 32 on Schedule "S-1" hereto;

(jjjjj) "TPE Lands" means the lands described in Section 6.06;

(kkkkk) "TPW Lands" means the lands described in Section 6.05;

(lllll) "TPW Lease" has the meaning set forth in Section 6.05(2);

(mmmmm) "TTR" means The Toronto Terminals Railway Company, a railway company jointly owned by CN and CP and its successors and assigns;

(nnnnn) "Unnamed Cul-de-sac" has the meaning ascribed thereto in Section 5.02(1)(c);

(ooooo) "Unnamed Street" has the meaning ascribed thereto in Section 5.02(1)(b); and

(ppppp) "Utilities" means the gas, hydro, telephone, cable television and other utilities to be provided in the Stadium Precinct;

(qqqqq) "Warranty Period" has the meaning set forth in Section 3.11(2);

(rrrrr) "Work" means the construction and installation of the Infrastructure or any part or parts thereof.

Section 1.02 - Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated in all respects as an Ontario contract.

Section 1.03 - Interpretation Not Affected by Headings

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

Section 1.04 - Severability

If any provision of this Agreement or portion thereof or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, (i) the remainder of this Agreement or the application of such provision or portion thereof to any other person or circumstance shall not be affected thereby, and (ii) the parties hereto will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination by arbitration in accordance with Article IX hereof. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 1.05 - Amendment

This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part except by written amendment by the parties hereto, and no waiver of any of the provisions of this Agreement shall be deemed or shall constitute waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless expressly otherwise provided in writing.

Section 1.06 - Schedules

The schedules attached hereto are incorporated into this Agreement by reference and are deemed to be a part hereof. The parties acknowledge that the Schedules reflect the intention of the parties hereto based on preliminary designs and are subject to further refinement based on more detailed information being made available. The schedules attached hereto are as follows:

Schedule "A" - Streets available for Stadium

Opening - Temporary Condition - High Line in Place

Schedule "B" - Streets available for Stadium Opening - Permanent Condition - Hi Line Removed

Schedule "C" - Services

Schedule "D" - Bus Parking

Schedule "E" - Typical Road Cross Sections

Schedule "F" - General Streetscape

Schedule "G" - Streetscape Details

Schedule "H" - CN Plaza

Schedule "I" - John Street Corridor Tower Park East and West - Phase One at Stadium Opening

Schedule "J" - John Street Corridor Tower Park East and West - Phase Two - Ultimate Development

Schedule "K" - John Street Park

Schedule "L" - Linear Park and High Line Berm Park

Schedule "M" - Pedestrian System - Options

"N1"
"N2"
Schedule "N3" - Infrastructure Phasing Schedule
"N4"
"N5"

Schedule "O" - Names of Streets

Schedule "P" - Location of Intersections

Schedule "Q" - Overall Infrastructure - Temporary Condition - High Line Removed

Schedule "R" - Overall Infrastructure - Permanent Condition - High Line Removed

Schedule "S-1" - Draft Reference Plan

Schedule "S-2" - Draft Reference Plan

Schedule "T"	Cost Allocation Table
Schedule "U"	TTR Letters
Schedule "V"	Stadium Precinct By-law
Schedule "W"	Archaeological Strategy Document
Schedule "X"	1% for Art Guidelines
Schedule "Y"	Standard Park Lease
Schedule "Z"	Standard Street Lease

Section 1.07 - Draft Reference Plans

Schedules "S-1" and "S-2" annexed hereto are draft reference plans. Upon their registration, all references to such Schedules in this Agreement shall be deemed to refer to the corresponding parts on the respective reference plan. In the event that any of such reference plans are not deposited by the time any of the conveyances are called for under this Agreement, the parcels will be conveyed in accordance with proper registrable legal descriptions of the parts shown on the Schedules, which descriptions will be provided by CN.

Section 1.08 - Memorandum of Conditions

This Agreement supersedes and replaces the Memorandum of Conditions in respect of the Stadium Precinct. CN agrees that prior to the Order Date CN shall deliver to the City an unqualified letter authorized by its Board of Directors confirming the provisions of the Memorandum of Conditions together with a certified copy of the corporate resolutions authorizing such a letter. If such letter and certified resolution from CN are not delivered prior to the Order Date, the City shall be entitled to request a delay in the issuance of the OMB order pending receipts of such items in a satisfactory form.

ARTICLE II

TERM

Section 2.01 - Commencement Date

This Agreement shall commence on the date of execution hereof by both parties, but shall impose no liabilities or obligations upon either CN or the City to proceed with the development of the Stadium Precinct in the manner required by this Agreement or any other liabilities or obligations unless and until each of the following three events has occurred:

(a) the Part II Plan has fully, finally and actually come into force;

(b) the Railway Lands Zoning By-law (611-85 and 612-85) and Stadium Precinct By-law have fully, finally and actually come into force; and

(c) the covenants and obligations of the City under this Agreement required to be approved by the OMB have been approved by the OMB with all periods of appeal therefrom having expired and the City having duly executed this Agreement.

On the date that the last of the above three events occurs (the "Commencement Date"), each of the parties hereto shall become bound by all of the obligations and liabilities hereof, provided always that CN and the City agree that CN may elect, by notice in writing to the City, to waive the requirement that the events described in subclauses (a) and (b) above must occur before its obligations and liabilities under this Agreement becomes binding upon it, and upon receipt by the City of the notice in writing from CN electing to waive either (a) or (b) or both (a) and (b), as the case may be, then those events so waived shall be conclusively deemed to have occurred for the purpose of determining the Commencement Date. At the request of either CN or the City, both parties will execute a joint acknowledgment as to the date of occurrence of the Commencement Date. For clarity and notwithstanding the foregoing, CN and the City acknowledge that certain obligations or liabilities must be completed in accordance with their terms prior to the Commencement Date and CN and the

City agree that such obligations or liabilities are binding on CN and the City upon execution of this Agreement by CN and the City. CN agrees that upon execution of this Agreement by CN the City shall be allowed a reasonable period of time after reaffirmation of the Stadium Precinct By-law but not later than fourteen (14) days prior to the Hearing Date to execute this Agreement and from the date of normal reaffirmation of the By-law and only upon reaffirmation of the By-law CN's execution shall be irrevocable by it.

Section 2.02 - Prior Work

Notwithstanding that all of the provisions of this Agreement may not have become binding upon the City and CN in accordance with Section 2.01, CN may, at its option, exercisable by written notice to the City, elect to proceed at its sole risk and expense (without claim for damages against the City in respect thereof) with the provision of facilities and matters set out in this Agreement. In such event all such Work which CN elects to perform shall be performed by CN in accordance with the requirements of this Agreement and CN shall bear all costs thereof until such time as the Commencement Date occurs. The City shall cooperate with CN in its provision of such facilities and matters and shall respond to and process all requests for comments and necessary approvals in the manner contemplated by this Agreement. Upon the Commencement Date the City shall make any payments to CN which would have been required by this Agreement if it had been binding upon the City at the time the Work was done.

Section 2.03 - Failure of OMB to Approve Zoning and/or Funding Arrangements

(1) The parties recognize the covenants made by the City in this Agreement and its obligations and liabilities hereunder are not binding upon the City unless and until the covenants and obligations of the City under this Agreement required to be approved by the OMB have been approved by the OMB and all periods of appeal therefrom have expired and this Agreement has been duly authorized to be executed by the City.^* The City will and does hereby covenant to use every reasonable effort to obtain with CN's full cooperation the occurrence of the events referred to in Section 2.01 and any approvals necessary from the OMB or pursuant to the applicable legislation to allow the City to bind itself to the covenants set out in this Agreement, provided that in no event shall the City or CN be required to assume any financial obligations arising from any such approvals or legislation, save as specifically contemplated by this Agreement.

(2) Neither CN nor the City will be required or obliged to accept any modified version of the Agreement which the OMB or any other authority may impose and until the Agreement is approved in its entirety by the OMB, both CN and the City shall (notwithstanding the provisions of Section 1.04 hereof)

have the option within forty-five (45) days of any such final decision of the OMB requiring CN or the City to accept any modified version of the Agreement as a term of the final order by the OMB of notifying the other party in writing of its election to treat the Agreement as being null and void and the Agreement will, upon receipt of such notice, be terminated. In that case, any leases, deeds or other conveyances shall be released from escrow to the grantors thereof. If neither party exercises its option to terminate this Agreement within the said time limit, both parties shall be deemed to have accepted any such modifications imposed by the OMB or other authority.

(3) Both CN and the City shall (notwithstanding the provisions of Section 1.04 hereof) also have the option, in the event that one or more clauses or parts thereof of the Agreement are not approved by the OMB, of accepting modifications proposed to respond to any such OMB concerns or waiving such clauses or parts in question in their entirety within forty-five (45) days of the final decision of the OMB, in which latter case the clauses or parts in question will be deemed to have been so modified or so severed and deleted from the Agreement and the Agreement as so amended will, in either case, be in full force and effect upon receipt of both CN's and the City's written election in this regard.* If the parties cannot agree on modifications or if both parties do not elect to waive such clauses within the said time limit, this Agreement shall

be treated as being null and void and the Agreement, will, upon expiry of the said time limit, be terminated. In that case, any leases, deeds or other conveyances shall be released from escrow to the grantors thereof.

Section 2.04 - Amendments to Zoning

(1) This Agreement will, in any event, terminate and all obligations of CN and the City under it shall cease to exist, neither party shall be responsible for any damages and any deeds, leases or other instruments then held in escrow shall be returned to the respective grantors, upon coming into effect on or before the Commencement Date of a by-law amending the Stadium Precinct By-law to which amendment CN does not indicate its consent in writing.

(2) The City acknowledges that CN has entered into this Agreement and the obligations hereunder based on the development rights permitted by the Stadium Precinct By-law, but in no event shall this Section 2.04(2) be the basis for an action for damages by CN against the City.

ARTICLE III

DEVELOPMENT OF INFRASTRUCTURE - PUBLIC WORKS SECTIONS

Section 3.01 - Responsibility of CN - Generally

CN covenants and agrees to construct the Infrastructure in the manner and within the time provided for in this Agreement.

CN shall have the overall responsibility for the design and construction of all Infrastructure provided that all such design and construction shall be carried out in accordance with the provisions hereof. CN acknowledges that notwithstanding any approval, inspection or other review of the design and construction of any Infrastructure Element by the City, including without limitation, by the Commissioner of Public Works, CN shall not be released of its responsibility for ensuring that the design and construction conforms to the Approved Standards and Specifications.

Section 3.02 - Appointment of Consulting Engineer

(1) CN will retain one or more qualified and experienced municipal engineers or firms of municipal engineers (each such engineer or firm of engineers so retained in respect of any portion or portions of the Infrastructure to be hereinafter referred to in respect of such portion or portions of the Infrastructure as the "Consulting Engineer") to undertake the following responsibilities respecting any portion or portions of or all of the Infrastructure for which such engineer or firm of engineers was retained:

(a) to co-ordinate any necessary engineering, geological, and hydrological investigations, and to be responsible for the retention of engineering firms required for ancillary services and preparation and submission of ancillary or specialized engineering reports, provided that notwithstanding the retention of any such engineering firm for ancillary or specialized purposes, the Consulting Engineer shall have the primary responsibility to the City to ensure that the design and construction of the Infrastructure is in conformity with all of the provisions of this Agreement including without limitation the Approved Standards and Specifications and the responsibility to advise the Commissioner of Public Works of any deficiency of which the Consulting Engineer is aware in the Approved Standards and Specifications;

(b) to prepare designs, including the incorporation of all required geological, environmental and hydrological aspects for the Infrastructure;

(c) to prepare and furnish all required drawings and specifications for the Infrastructure;

(d) to review and * recommend the approval of the necessary contract(s) for the Infrastructure;

(e) to obtain the necessary approvals in conjunction with the City or Metro or other applicable authority for the Infrastructure;

(f) to provide the field layout, the contract administration and the full-time supervision and inspection of the construction for the Infrastructure;

(g) to maintain records of all phases of the construction and upon completion advise the City and Metro, where applicable, of all construction changes and final measurements thereof and to prepare final "as-constructed" drawings of the Infrastructure in the form required by the Commissioner of Public Works and deliver such drawings to the City and Metro;

(h) to provide co-ordination and scheduling to comply with the construction and maintenance timing provisions of this Agreement;

(i) to act as CN's representative in all matters pertaining to the supervision and construction of the Work;

(j) during design of a proposed Work, to furnish the Commissioner of Public Works and, where applicable, the Commissioner of Planning and Development and the Commissioner of Parks and Recreation with a certified grading plan with respect to such Infrastructure Element, certifying the proposed Work is in conformity with the overall grading, municipal servicing and environmental requirements;

(k) following construction of a proposed Work, to furnish the Commissioner of Public Works and, where applicable, the Commissioner of Planning and Development and the Commissioner of Parks and Recreation for each

Infrastructure Element, a certificate with respect to the final grading, certifying that the finished Infrastructure Element and grading elevations have been found to be in conformity with the certified grading plan furnished in (j) hereof or as otherwise approved by the Commissioner of Public Works or the Commissioner of Parks and Recreation;

(l) following construction of a proposed Work, to furnish the Commissioner of Public Works and, where applicable, the Commissioner of Parks and Recreation and Metro, with a certificate stating that all of the Work has been completed in accordance with the Approved Construction Drawings and the provisions of this Agreement;

(m) to ensure that the utilities, such as telephone, natural gas, cable T.V., hydro and others, are located in the road allowance in accordance with the plans approved by the Commissioner of Public Works and consistent with the principles established by the Public Utilities Co-ordination Committee of the City;

(n) to retain landscape architects who are full members in good standing with the Ontario Association of Landscape Architects with expertise in streetscape design and construction, to prepare and furnish streetscape plans as and when required by the Commissioner of Public Works, the Commissioner of Parks and Recreation and the

Commissioner of Planning and Development and to their satisfaction;

(o) to co-ordinate the development and construction of the Infrastructure with the investigating and reporting requirements arising from the Environmental Agreement and generally to co-operate with the Environmental Consultant as defined in the Environmental Agreement; and

(p) to perform such other work as may be contemplated by this Agreement or as may be approved by the Commissioner of Public Works.

(2) Each Consulting Engineer shall be jointly selected by CN and the Commissioner of Public Works from a list submitted to and approved by the Commissioner of Public Works. In the event that CN ^* and the City cannot agree on an acceptable Consulting Engineer, the selection of same may be submitted by the City or CN to arbitration in accordance with Article IX hereof.

(3) The Consulting Engineer shall, upon request of the Commissioner of Public Works, designate by written notice given to the City the principal of the Consulting Engineer with whom the City shall be entitled to deal with in all respects for matters relating to the Consulting Engineer's functions under this Agreement, until a new designation is received by the City.

(4) CN shall file with the Commissioner of Public Works true copies of all agreements by which each Consulting Engineer has been engaged.

(5) CN shall not terminate nor permit the termination of an agreement pursuant to which a Consulting Engineer has been engaged nor amend or alter it nor permit it to be amended or altered in such a way that the obligations of the Consulting Engineer to supervise the carrying out and completion of the Work as contemplated by Section 3.02(1) hereof and to issue its certificate in respect thereof are reduced or otherwise altered substantially, nor engage nor permit to be engaged any Consulting Engineer other than those mentioned in subsection 3.02(2) herein, in each case without the prior written approval of the Commissioner of Public Works.

Section 3.03 - Standards of Construction

(1) The parties recognize and acknowledge that all Infrastructure Elements are to be designed and constructed to the standards and specifications (the "Approved Standards and Specifications"), conforming generally to the published standards and specifications as may be applicable from time to time to public works in the City of Toronto at the date of the approval by the Commissioner of Public Works of the construction drawings for each Infrastructure Element of a size, function and capacity required to service the Stadium Precinct or other precincts within the Railway Lands where

the Commissioner of Public Works requires such Infrastructure Element to serve such other precincts and such oversizing as may be required by the Commissioner of Public Works to service lands outside the Railway Lands, provided that the City shall be responsible for such oversizing costs relating to lands outside the Railway Lands. When applying the Approved Standards and Specifications, the Commissioner of Public Works shall consider the standards and specifications set forth in the Schedules hereto, but CN acknowledges that the Schedules are preliminary designs only.

(2) Where such general published City standards and specifications are applicable, the design of the Infrastructure Elements shall apply such standards and specifications to the satisfaction of the Commissioner of Public Works as appropriate to complete the Infrastructure as herein contemplated. The City shall promptly upon request by CN deliver to CN complete information regarding the generally applicable City of Toronto published standards and specifications for public works of a size, function and capacity comparable to the Infrastructure, which published standards include the following publications:

- City of Toronto Department of Public Works Specifications for the Construction of Watermains Edition No. 10, January 1986.

- City of Toronto Department of Public Works Specifications for the Construction of Sidewalk, Pavement and Curb - Edition No. 10, January 1986.

- City of Toronto Department of Public Works Specifications for the Construction of Sewers - Edition No. 10, January 1986.

In the case of streetscape designs, the details shall generally be in accordance with standards published from time to time by the Departments of Public Works and Planning and Development.

(3) Notwithstanding the reference to the above-noted publications, it is acknowledged by CN that such standards may be revised at any time and from time to time. CN agrees that the Commissioner of Public Works may alter such standards at any time prior to the completion of any Infrastructure Element with the cost of the Work arising out of any such changes to the Approved Construction Drawings required by the Commissioner of Public Works to be shared in accordance with the provisions of this Agreement; provided that if any changes to the Approved Construction Drawings are requested by the Commissioner of Public Works as a result of changes in standards after the date that * any work on such Infrastructure Element has been performed the City shall be responsible for all additional costs, if any, to such completed work that

result from such change payable in the same manner as the City Infrastructure Costs.

(4) In the event that there are no published standards and specifications or if the published standards and specifications are incomplete for any Infrastructure Element, the Approved Standards and Specifications for such purposes shall be in accordance with sound principles and the then generally accepted techniques of municipal engineering and construction applicable to the City of Toronto as may be determined by the Commissioner of Public Works.

Section 3.04 - Construction Drawings

(1) The Consulting Engineer in respect of each portion of the Infrastructure shall prepare construction drawings for each Infrastructure Element required to be provided under this Agreement in accordance with the Approved Standards and Specifications and otherwise in accordance with the provisions of this Agreement and shall affix his seal and signature to each such construction drawing.

(2) CN confirms that while there will be more than one Consulting Engineer relating to the Infrastructure, CN intends to co-ordinate the submission of all preliminary engineering design, final engineering design, preliminary construction drawings and final construction drawings through one consultant retained by CN at its expense, with the intent

being that such private consultant will co-ordinate with the Commissioner of Public Works and each Consulting Engineer an agreed schedule for submission of the various stages of the design and drawings, having regard to the then proposed schedule for completion of each Infrastructure Element in order that the Commissioner of Public Works will have a reasonable and adequate period of time to review all such designs and drawings. Both CN and the City shall make every reasonable effort to satisfy the time limits set forth in any agreed submission schedule and if such time limits are not satisfied, the parties shall review the Infrastructure Phasing Schedule relating to construction of any such Infrastructure Element affected by delays in the said submission Schedule.

(3) The proposed final construction drawings and tender package for each Infrastructure Element shall be delivered to the Commissioner of Public Works for approval at least thirty (30) days prior to the giving of notice requesting bids for public tender for the construction of the Infrastructure Element. The Commissioner of Public Works shall within a reasonable time of the delivery of any such construction drawings and tender package to him either:

(a) return to CN a copy of the construction drawings bearing his approval indicating that the construction drawings are acceptable to him, or

(b) return to CN a copy of the construction drawings together with a written indication of the alterations or additions to the construction drawings which would render the construction drawings acceptable to him.

Construction drawings which are either returned to CN pursuant to clause (a) above or which are returned to CN by the Commissioner of Public Works after CN has incorporated the alterations or amendments arising pursuant to clause (b) above shall be deemed to be and are hereafter referred to as "Approved Construction Drawings".

(4) If any changes are required to Approved Construction Drawings as a result of site conditions after commencement of construction, the Consulting Engineer shall notify the Commissioner of Public Works promptly of the site conditions and request approval of the suggested changes, or CN may request the approval of the Commissioner of Public Works directly. The Commissioner of Public Works shall consider and respond to any such request within a reasonable time after request, having regard to the prevailing conditions and circumstances. If the Consulting Engineer is of the opinion that there is an emergency arising with respect to any Infrastructure Element by reason of which there is an imminent risk to life, safety or property, CN may, upon such notice, if any, to the Commissioner of Public Works as may be reasonably possible in the circumstances, perform such work,

as may be necessary to avoid such imminent risk. CN shall forthwith give to the Commissioner of Public Works written notice setting forth the nature of the emergency and specifying the work performed. CN acknowledges that notwithstanding the performance by CN of any work arising from an emergency, all changes to the Approved Construction Drawings shall require the approval of the Commissioner of Public Works. CN agrees that any remedial work required as a result of the Commissioner of Public Works not approving the manner in which such emergency work has been performed shall be made to such Infrastructure Element.

(5) In the event that the Commissioner of Public Works determines that any changes are required to the Infrastructure as a result of any requirements of Metro or any authority or as a result of any servicing requirements of any portion of the Railway Lands, such changes shall be incorporated in a reasonable manner having regard to their purpose, timing, cost sharing, where appropriate, and as to all other material implications in respect thereof. Neither CN nor the City shall be responsible for the costs of such changes except where they otherwise expressly agree.

Section 3.05 - Contractors

(1) In the case of any Infrastructure Element to the cost of which the City is required to contribute pursuant to the provisions of Schedule "T" hereof, CN will follow a public

tendering process similar to that normally followed by the City for similar City projects as advised by the Commissioner of Public Works. Unless the lowest tender is selected by CN, CN shall obtain in addition to the requirements of Section 3.05(3) hereof the approval of the Commissioner of Public Works before retaining any contractor for any shared cost Infrastructure Element.

(2) Subject to the terms of this Agreement including without limitation the provisions of Section 3.05(1) and 3.05(3) hereof, CN shall * be responsible for all matters relating to the construction of the Infrastructure, including the preparation of tender documents, the calling of tenders, the selection of contractors, the right to retain and terminate contractors and all other aspects of construction. CN shall, for any Infrastructure Element in which the City is not cost sharing and which is a substantial contract (which for the purposes of this Agreement shall be any contract, including any usually anticipated extras, in excess of $50,000.00), follow its normal prequalified tendering process, which will include a forum for consideration and opening of tenders at which there is present a representative of CN, a representative of the City and the Consulting Engineer. The Consulting Engineer will in all cases deliver a report to CN and the City as to his recommendations for acceptance of any tender.

(3) CN shall not let any contract for the performance of the Work in which the City is cost sharing pursuant to the terms of this Agreement until the form and provisions of the contract, the contractor's guarantees and the contractor have been first approved by the Commissioner of Public Works, which approval shall not be unreasonably withheld. All contracts (whether or not cost shared by the City) shall provide that representatives of the Commissioner of Public Works may inspect the construction of all work under the contracts. Prior to the commencement of the Work, CN shall file with the Commissioner of Public Works true copies of all contracts (including all Schedules and drawings) for the Work (whether or not cost shared by City) and a list identifying the subcontractors proposed to be engaged.

(4) CN shall, if it terminates or permits the termination of any agreement pursuant to which a contractor is obliged to carry out and complete the Work or a portion thereof or amends or alters such agreement or permits it to be amended or altered in such a way that the obligations of such a contractor are reduced or otherwise altered substantially, or engages or permits the engagement of any contractor other than the contractor or contractors named in the agreement or agreements delivered to the Commissioner of Public Works or any subcontractor other than the subcontractors so identified on the list referred to in Section 3.05(3), give written notice thereof to the City and CN shall obtain the consent of

the Commissioner of Public Works to any such termination, amendment, alteration or hiring, provided nothing herein shall be contrary to the requirements of this Agreement or the Approved Construction Drawings.

(5) CN shall not commence to carry out any portion of the Work on an Infrastructure Element without first having obtained Approved Construction Drawings for such portion of the Work in accordance with the provisions hereof and then giving reasonable prior written notice that it intends to do so to the Commissioner of Public Works with such notice to specify the anticipated date of commencement of the Work on such Infrastructure Element.

(6) CN shall perform, or cause to be performed, from time to time as it carries out the Work, such tests as may be required by the Commissioner of Public Works prior to and during construction of any Infrastructure Element and shall provide to the City copies of all reports made in connection with such tests. Subject to any additional tests required by field conditions not contemplated at the time of any approvals to construction drawings or emergency situations, the City shall advise CN of all such tests at the time the Commissioner of Public Works gives his approval to construction drawings pursuant to Section 3.04.

Section 3.06 - Construction Lien Act

(1) CN as it carries out and completes the Work shall hold back from any persons supplying services or materials respecting the Work, such amounts as a person would be required to hold back in accordance with the Construction Lien Act, 1983, S.O. 1983, Chapter 6 (hereinafter referred to as the "Construction Lien Act"), for such time periods as would be required to be held back pursuant to the Construction Lien Act (such amounts hereinafter referred to as the "Holdbacks");

(2) Subject to subsection 3.06(4), in the event that the City is liable for a lien pursuant to the Construction Lien Act, or any successor statute, with respect to any interest in lands conveyed or to be conveyed to the City pursuant to this Agreement, then the amount of any monies required to be paid by the City to CN in connection with any of the Work may, at the option of the City, be utilized for payment to any such lien claimants;

(3) Following the period that any of the Holdbacks may be released if such Holdbacks were being held pursuant to the Construction Lien Act, then such Holdbacks may be released by CN to the relevant contractors supplying the services or materials with respect to which any such Holdbacks were made;

(4) In the event that the City incurs any costs or expenses involving payments into court to remove liens or involving defending any actions taken by any party under the Construction Lien Act in connection with any portion of the

Work, such costs and expenses shall be paid by CN to the City on demand unless such costs and expenses arose as a result of a payment default by the City relating to such portion of the Work. The City may, in addition to exercising any other remedies it may have, apply to any amounts claimed by the City pursuant to this Section 3.06 any amounts owing by the City to CN pursuant to any other provision of this Agreement. The City shall promptly notify CN of any such actions upon receipt of notice thereof and shall permit CN at its sole expense to have the carriage of any defence in connection therewith, provided that CN shall indemnify and save the City harmless from any and all costs, expenses and liability whatsoever arising in connection with such action and provided further that the City Solicitor is satisfied that the City's interests are being adequately protected. Nothing in this Section 3.06(4) shall reduce the City's obligations hereunder concerning payment of the City Infrastructure Cost.

Section 3.07 - Inspection

CN shall permit inspectors employed, engaged or appointed by the City to have access to and carry out inspections with respect to the Work as, when and where the Commissioner of Public Works deems advisable and without the necessity of any prior notice, provided such inspectors shall provide appropriate identification upon request.

Section 3.08 - Progress Certificates

As the Work progresses, each Consulting Engineer will issue to CN and to the City progress certificates in respect of that portion of the Infrastructure for which such Consulting Engineer was retained ("Progress Certificates") on a monthly basis which shall state:

(a) the percentage of the Work which in the opinion of the Consulting Engineer has been satisfactorily completed with respect to each Infrastructure Element since the commencement of Work on such Infrastructure Element and the corresponding dollar value thereof;

(b) the amounts paid to date and the amounts due on each construction contract in respect of Work performed on such Infrastructure Element;

(c) the amount of any Holdbacks required under the Construction Lien Act or any other applicable legislation in respect of Work being performed on such Infrastructure Element;

(d) the cost of the Consulting Engineer's services for the period covered by the certificate and a statement of the amount of the cost of the services which is attributable to such Infrastructure Element;

(e) the portion of the above costs allocated to each of CN and the City in respect of such Infrastructure Element;

(f) the amount payable by the City in respect of such Infrastructure Element performed to date and remaining unpaid; and

(g) the cost to complete such Infrastructure Element.

Section 3.09 - Deficiencies in Construction

(1) The City shall have the right at any time on or before the later of final assumption of any Infrastructure Element by the City or the expiry of the Warranty Period and delivery of the Final Acceptance Certificate referred to in Section 3.11 hereof to deliver to CN and to the Consulting Engineer retained in respect of such Infrastructure Element a notice in writing (hereafter referred to as a "Notice to Correct Work") stipulating any deficiency or default in the construction of any Infrastructure Element and stipulating the manner in which the deficiency or default may be remedied, provided that the Consulting Engineer shall certify to the City the precise manner in which the default is to be remedied. Upon receipt of the Notice to Correct Work from the City, CN shall promptly remedy or cause to be remedied the deficiency or default in the manner stipulated in the Notice to Correct Work and as certified by the Consulting Engineer. If the deficiency or default arises from a failure to follow the Approved Construction Drawings and/or contract documents or from unsound construction practices or from the negligent (whether by act or omission) execution and supervision of the

construction contract or from failure to carry out the Work in accordance with this Agreement or from any default of CN (hereinafter referred to as a "CN Designated Failure"), CN shall be solely responsible for the cost of remedying such deficiency or default and in all other circumstances, such costs shall be shared as otherwise provided herein. CN acknowledges that its responsibility for the design and construction of the Infrastructure pursuant to Section 3.01 shall not be diminished in any way as a result of any Notice to Correct Work.

(2) If, at any time before any Infrastructure Element is conveyed to and assumed by the City, the Commissioner of Public Works is of the opinion that there is an emergency arising with respect to any Infrastructure Element by reason of which there is an imminent risk to life, safety or property, the City may, upon such notice, if any, to CN as may be reasonably possible in the circumstances, enter into and upon the CN lands and perform such work, repair and replace any Infrastructure Element and take any steps, as are required, in the sole opinion and discretion of the Commissioner of Public Works. The City shall forthwith give to CN written notice setting forth the nature of the emergency and specifying the work performed.

(3) The City shall have the right to recover from CN, which shall be responsible and liable therefor (unless such work did not

arise as a result of a CN Designated Failure, in which case such costs shall be shared as otherwise provided herein), the total cost to it, as calculated reasonably by the Commissioner of Public Works, of such emergency work performed and steps carried out pursuant to Section 3.09(2) herein, and CN agrees to pay the said sum forthwith upon receiving written notice requiring it to do so.

Section 3.10 - Enforcement of Construction Covenants by the City

(1) If, at any time before any Infrastructure Element is assumed by or conveyed to the City, CN is in breach of this Agreement because it:

(a) has carried out or is carrying out Work which is faulty, careless or otherwise not in accordance with this Agreement;

(b) has failed or is failing to repair or do again such Work so that it conforms with this Agreement;

(c) has failed in or abandoned the carrying out and completion of the Work;

(d) has carried out or is carrying out the Work in such a manner that:

(i) it will not complete on or before the Stadium Opening Date the Work required to be completed by the Stadium Opening Date pursuant to Section 5.01(2) hereof; or

(ii) it will not complete on or before the occupancy of any building on any Development Site the portion of the Work required in the opinion of the Commissioner of Public Works to service such Development Site;

When determining whether the Work referred to in this Section 3.10(1)(d) will be completed within such time limits, due regard shall be given to the times shown on the Infrastructure Phasing Schedule together with any other relevant factors;

(e) is otherwise in default of any obligation relating to the Work,

the Commissioner of Public Works may, at his option, deliver to CN written notice setting forth the particulars of such breach and requiring CN to remedy such breach within the reasonable time specified therein.

(2) CN shall forthwith upon receipt of such notice, carry out all steps required to remedy any breach within the reasonable time specified therein.

(3) In the event CN fails to comply promptly with a Notice to Correct Work delivered to it by the City pursuant to Section 3.09 and which CN is obligated to correct or in the event CN

fails to comply promptly with any notice delivered to it by the City pursuant to Section 3.10(1) and which CN is obligated to correct, the City may, in addition to and without prejudice to any other rights which it may have pursuant to this Agreement or otherwise at law, on written notice to CN, enter into and upon CN's lands and supply such materials, engage such consultants, contractors and workmen, and perform such work, repair and replace any work and take any steps, as are required, in the sole opinion and discretion of the Commissioner of Public Works, to carry out and complete the Work to the extent determined by the Commissioner of Public Works. To the extent that the City completes or remedies all or any portion of the Work, the Work shall be completed or remedied in accordance with the Approved Construction Drawings. In the event that there are no Approved Construction Drawings for the Infrastructure Element to which the Notice to Correct Work relates, the City shall, if it elects to proceed under this section, prepare all necessary construction drawings having regard for the factors set out in Section 3.03.

(4) The City shall have the right to recover from CN the total cost to the City, as calculated reasonably by the Commissioner of Public Works, of any work or steps performed pursuant to Section 3.10(3) herein. All such cost shall be shared in accordance with the provisions hereof except to the extent the cost of the Work is increased as a result of a CN

Designated Failure. CN shall pay to the City the said sums owing by CN forthwith upon receiving written notice itemizing the said total cost to the City as determined in accordance with this Section 3.10(4). CN shall pay interest on any amounts owing to the City hereunder from the date of any payment by the City with interest to be calculated at the Prime Rate. The City may, in addition to exercising any other remedies it may have (including without limitation exercising its right to the Security as provided pursuant to Section 3.13 herein), apply to any amounts owing by CN pursuant to this Section 3.10(4) any amounts owing by the City to CN pursuant to any other provision under this Agreement.

(5) If the City enters in and upon CN's lands pursuant to Section 3.07, 3.09 or 3.10 herein, it shall be deemed to do so solely as the agent of CN ^* and such entry shall not be deemed, for any purpose, to constitute acceptance or assumption of the Work or any portion thereof.

(6) In the event that the City enters upon the lands and remedies or completes any Work pursuant to subsection (3) above and the amount of the Security then held by the City is not sufficient, in the opinion of the Commissioner of Public Works to reimburse the City for all amounts owing to the City pursuant to this Agreement, then the City may, in addition to exercising any other remedies it may have, collect CN's share

of the total cost of the Work performed by the City (as calculated pursuant to Section 3.10(4) herein) pursuant to subsection (1) together with interest at the Prime Rate as taxes in respect of the Stadium Precinct lands owned by CN (save and except for the Stadium site during the term of any lease to The Stadium Corporation) as of the date of this Agreement with all such amounts to be payable as directed by City Council pursuant to section 325 of the Municipal Act.

Section 3.11 Completion Certificate, Construction Warranty and Assumption

(1) Upon the completion of each Infrastructure Element to the satisfaction of the Consulting Engineer retained in respect to such portion of the Infrastructure, such Consulting Engineer shall prepare a Completion Certificate in respect of that portion of the Infrastructure for which such Consulting Engineer was retained (the "Completion Certificate") and shall forward such Completion Certificate to CN and the City. The Completion Certificate shall include the following:

(a) the description of the Work in respect of which such Completion Certificate is given;

(b) confirmation that the Final Payment Certificate has been issued with respect to such Infrastructure Element;

(c) the certificate contemplated by Section 3.02(1)(1) hereof;

(d) a statement as to the date of completion of the Infrastructure Element;

(e) a complete set of drawings for each of the Infrastructure Elements as built showing final plan and profile locations of the Infrastructure Element, together with a complete consolidated set of drawings;

(f) the certified grading plans contemplated by Section 3.02(1)(j) and (k);

(g) a statement as to the total cost of the Infrastructure Element; and

(h) the Consulting Engineer's assessment of the allocation of the total cost as between CN and the City.

Within sixty (60) days of receipt of the Completion Certificate, the Commissioner of Public Works shall forward to the Consulting Engineer either: (i) a notice of acceptance (the "Notice of Acceptance") to the Completion Certificate accepting the Completion Certificate, in which case the Completion Certificate shall be deemed to be and is hereafter referred to as the "Approved Completion Certificate"; or (ii) a final list of deficiencies (the "Final List of Deficiencies") respecting the Infrastructure Element referred to in the Completion Certificate. Upon receipt of the Final List of Deficiencies, CN shall promptly remedy any defects or deficiencies contained therein and upon completion, the

Consulting Engineer shall issue a new Completion Certificate. CN shall be solely responsible for the cost of remedying any defect or deficiency arising from a CN Designated Failure and in all other circumstances, the cost shall be shared as otherwise provided herein. Upon completion of the Final List of Deficiencies to the satisfaction of the Commissioner of Public Works, the Commissioner of Public Works shall issue a Notice of Acceptance and the new Completion Certificate shall be deemed to be the Approved Completion Certificate in respect of each Infrastructure Element referred to therein.

(2) CN shall correct or cause to be corrected at its own expense and to the satisfaction of the Commissioner of Public Works any defects or deficiencies in any Infrastructure Element appearing within a period (the "Warranty Period") of two (2) years after the Notice of Acceptance for an Approved Completion Certificate has been given in respect of such Infrastructure Element, together with any damage to any other Infrastructure Element resulting from any such corrections. Notwithstanding the fact that the Warranty Period may have expired for any Infrastructure Element, the City shall not be required to assume such Infrastructure Element if it is not in good but used condition at the date of assumption. Neither the delivery of the Approved Completion Certificate nor payment thereunder shall relieve CN from this responsibility. Without in any manner reducing CN's obligations hereunder, the City shall give to CN prompt

written notice of any observed defects. Without in any manner reducing CN's obligations hereunder, the City shall have the option, to be exercised in the sole opinion and discretion of the Commissioner of Public Works, of accepting any warranty (and the Security relating thereto) for any Infrastructure Element from the contractor of such Infrastructure Element, provided that such acceptance shall not be deemed to release CN of its warranty obligations herein.

(3) Not less than fifteen (15) days prior to expiry of the Warranty Period for each Infrastructure Element, CN shall arrange with the Commissioner of Public Works for a final inspection and testing as may be appropriate in the circumstances of each Infrastructure Element and shall deliver a final acceptance certificate (the "Final Acceptance Certificate") from the Consulting Engineer retained in respect of such portion of the Infrastructure in a form satisfactory to the Commissioner of Public Works confirming in the opinion of such Consulting Engineer that there are no defects or deficiencies in the Infrastructure Element referred to therein and upon receipt of such a certificate and provided that the Commissioner of Public Works is satisfied that there are no defects or deficiencies, the Commissioner of Public Works shall so advise CN in writing and the warranty shall expire for such Infrastructure Element. Upon expiry of the warranty, the balance of the Security then held by the

City and relating to such portion of the Infrastructure shall be returned to CN or to the contractor, if applicable, within thirty (30) days of the expiry of the Warranty Period for such Infrastructure Element, provided that there are no outstanding claims against the Security, no liens have been registered against such Infrastructure Element and all lien periods have expired under the Construction Lien Act.

(4) In the event that the City assumes any Infrastructure Element prior to the expiry of the Warranty Period, the warranty shall continue to apply for the balance of the Warranty Period.

(5) Upon an Approved Completion Certificate being obtained for any Infrastructure Element, the Commissioner of Public Works shall report to the City Services Committee with a recommendation that such Infrastructure Element be assumed by the City as soon as possible. CN and the City acknowledge their respective intentions that each Infrastructure Element be assumed as soon as possible following its completion. CN shall not be obliged to allow any of the Streets or the Parks to be used by the public until assumption of such Streets or Parks by the City, but if the matters required pursuant to Section 5.01(2) are not available to the public by the Stadium Opening Date, the City shall be entitled to exercise its rights pursuant to Section 5.01(3). CN acknowledges that once an Approved Completion Certificate is obtained for any

portion of the Municipal Services and such portion of the Municipal Services is connected to City services, such portion of the Municipal Services shall be made available to the public and the City. CN shall convey any Infrastructure Element or any of the Parks prior to the assumption by the City.

Section 3.12 - Insurance

(1) CN shall be required to take out and keep in force or cause to be taken out and kept in force, only until assumption by the City in respect of all Infrastructure Elements, comprehensive general liability insurance, in a policy having a form and with limits reasonably satisfactory to the City Treasurer, against claims for personal injury, death or property damage resulting from any accident or occurrence arising from the carrying out of the obligations of CN hereunder. Such insurance shall be at all times in an amount not less than $5,000,000.00 per occurrence and for the first five years after the Commencement Date not more than $10,000,000.00 per occurrence and thereafter no more than such reasonable amount as may be applicable for municipal construction contracts for work of a similar nature in the City of Toronto.

(2) The said general liability insurance policy shall name the City as an insured party and shall contain a cross-liability clause protecting the City against claims by CN as if the

City were separately insured and protecting CN against claims by the City as if CN were separately insured, a waiver by the insurer of its rights of subrogation against the insured parties and a clause providing that the insurer will not cancel nor refuse to renew the said insurance without first giving the City thirty (30) days' prior written notice thereof.

(3) CN shall, before commencing any Work pursuant to this Agreement, deliver to the City a certificate from the insurer verifying that CN has obtained the said insurance policy and unless such coverage is included in the CN blanket insurance policy covering the matters referred to in this Section 3.12 and other properties of CN, CN shall deliver a copy of the said policy to the City.

(4) If at any time the City receives notice from the insurer that it has cancelled or refused to renew the said insurance, or that it intends to do so, or if the City otherwise determines to its sole satisfaction that the said insurance has lapsed, been cancelled or is about to lapse or be cancelled without renewal or replacement, the City may on written notice to CN and notwithstanding Section 11.01, as agent for and to the extent such insurance cost exceeds what would otherwise have been payable as a shared cost, at the sole cost and expense of CN, obtain insurance in accordance with this section. In such circumstances, the City shall be entitled either to

obtain new insurance or add the necessary insurance coverage to the City's blanket insurance. CN shall forthwith upon receipt of written notice thereof from the City reimburse the City for the cost of the said insurance. Such insurance shall be cancelled by the City upon receipt of both a certificate of insurance as hereinabove required together with payment of any cost incurred by the City.

(5) CN agrees to maintain or cause to be maintained from time to time prior to the delivery by the Consulting Engineer of the Approved Completion Certificate in respect of any Infrastructure Element in the Stadium Precinct, insurance in respect of each such Infrastructure Element constructed or installed by or on behalf of CN pursuant to this Agreement which is normally insured by prudent owners from time to time to 100% of their Replacement Value against loss or damage by perils of "all risks" (being the perils from time to time included in the standard form of "all risks" policy issued by insurers from time to time) to the extent available and generally obtained from time to time by owners of commercial development properties in the City. Such policies shall in addition insure both the City and CN during phases of demolition and construction, as their interest may appear.

(6) Any insurance policy required under this section may be carried under blanket policies provided, however, that such

policies and the amount thereof allocable to the Work shall comply with all other requirements of this section.

(7) CN shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining any such insurance required to be obtained by or pursuant to this section. CN will produce to the City evidence of payment of premiums and other sums of money payable for maintaining such insurance not later than the due date thereof. All such premiums and other sums of money shall be included as costs of the Infrastructure to be allocated between CN and the City in proportion to their respective shares of the cost of the Infrastructure Element to which such insurance relates, or if such proportion cannot be calculated in the proportion of 75% to CN and 25% to the City, provided that such costs have been allocated in the policy specifically to the Work.

Section 3.13 - Performance Bond

(1) In order to satisfy the City that sufficient funds are at all times available to pay CN's portion of the cost of the Infrastructure, CN shall, after the Commencement Date and prior to the earlier of (i) the issuance of a building permit for the Stadium or first development on a Development Site as the case may be, (other than the Pumping Station) or (ii) the commencement of the construction of the Infrastructure (which for clarity excludes the demolition of buildings or facilities in the Stadium Precinct required to permit excavation of the

Stadium including the Pumping Station and construction of the new Pumping Station and excavation and the placing of fill from such excavation for the proposed Streets provided that nothing in this Section 3.13(1) reduces CN obligations to obtain the soils report required in Section 5.02(2) hereof in a form satisfactory to the Commissioner of Public Works and to place such fill in accordance with the recommendations of such soils report), deliver to the City a performance bond or performance bonds (hereinafter referred to as the "Security") issued by a recognized bonding company actively carrying on business in Ontario and approved by the City Treasurer and in a form satisfactory to the City Solicitor and ensuring full performance of the obligations of CN in respect of construction of the Infrastructure except for the cost of the Unnamed Cul-de-sac. The Security relating to the Unnamed Cul-de-sac shall be delivered to the City at the time the Development Review Process for the proposed development referred to in Section 5.02(3) is completed with an executed agreement. The form of the bond shall reflect the timing requirements of completing any Infrastructure Element as referred to in Section 5.01(2) hereof and the City's right to perform emergency work as referred to in Article III hereof. The bond shall require the bonding company to reply to any notice or request from the City within five (5) days of receipt confirming whether or not the bonding company will be completing the Infrastructure on a timely basis as required herein. If the bonding company either fails to respond within the time limit or fails to commence and complete the Work within the time set forth in Section 5.01(2) hereof, the City shall be entitled to draw upon the bond to the extent necessary to complete the Infrastructure. The amount of the Security shall be equal to 100% of CN's share of the cost of the Infrastructure to be covered by such Security based on estimates approved by the Commissioner of Public Works, provided that the amount of the Security shall be amended from time to time as approved by the Commissioner of Public Works to reflect any approved updated estimates or actual contract prices. The City agrees that separate bonds may be provided in respect of one or more Infrastructure Elements so long as the aggregate amount of the Security is not less than CN's share of the cost of the Infrastructure. The City shall have the option, to be exercised in the sole opinion and discretion of the Commissioner of Public Works, of accepting any performance bond (in the form required herein) for any Infrastructure Element from the contractor of such Infrastructure Element in substitution of the bond from CN, provided that such acceptance shall not be deemed to release CN of its obligations in this Agreement.

(2) The Security shall remain in effect for the full duration of this Agreement, subject to the provisions of this Section 3.13. If CN's share of the estimated cost of the Work or any part thereof, exceeds the amount of the Security held by the

City, CN, within thirty (30) days of receipt of written notice from the City, shall increase the Security held by the City to cover the deficiency. In the event that this additional Security is not provided within thirty (30) days, it shall be considered a default by CN and the City may, in addition to exercising any other remedies it may have, refuse during the period of such default to process any other building permits within the Stadium Precinct other than for the Stadium, provided nothing in this Section 3.13(2) shall allow the City to revoke any previously issued building permits.

(3) CN shall have the right from time to time (but on no more than a quarterly basis for each Infrastructure Element) and on prior written notice to the Commissioner of Public Works to reduce or replace the Security relating to any Infrastructure Element with such reduction or replacement security to be based on the Progress Certificates relating to such Infrastructure Element to the date of such application so long as the Security covers at all times the cost to complete the Infrastructure.

(4) The Security shall also incorporate in it the maintenance and the construction warranty referred to in Section 3.11 herein in an amount equal to fifteen per cent (15%) of the actual costs of the Infrastructure covered by such Security until the later of the receipt of the Final Acceptance Certificate,

assumption of the Infrastructure by the City and expiry of the Warranty Period.

ARTICLE IV

SHARING OF COSTS

Section 4.01 - City Infrastructure Cost

(1) CN and the City shall share the Infrastructure Cost in accordance with the provisions hereof. The portion of the Infrastructure Cost to be paid by the City shall be herein referred to as the "City Infrastructure Cost". The City Infrastructure Cost shall, subject to the provisions hereof, be computed by multiplying the actual Infrastructure Cost of each Infrastructure Element by the City contribution factor (the "City Contribution Factor") being the percentage set out opposite each such Infrastructure Element below the heading "City Contribution" on Schedule "T" hereto. CN shall be responsible for the balance of the actual Infrastructure Cost.

(2) Notwithstanding Subsection 4.01(1), the cost sharing for storm sewers included in the Municipal Services to be provided by CN pursuant to Section 5.06 shall be determined on the basis of the contributing design flows used for the sizing of such sewers and shall be shared among the City, CN and other owners of lands in the Railway Lands on the following basis:

(a) Sewer section along the Esplanade from Simcoe Street to John Street

(i) City contribution to be based on design flows from the following:

A. amount of design flow diverted from the existing Simcoe Street storm sewer to Esplanade sewer;

B. amount of design flow from Parks proportionate to City Contribution Factor to cost sharing of Parks including Tower Park East, Tower Park West, John Street Corridor and the C.P. Roundhouse portion of Central Park south of Esplanade (designated as Item 14 i) on Schedule "T");

C. one-third of the amount of design flow from Esplanade right-of-way.

(ii) CN Contribution to be based on design flow from Tower Park East, Tower Park West, John Street Corridor and Esplanade right-of-way to the extent Esplanade is CN's responsibility in proportion to cost sharing shown on Schedule "T" plus the design flow from all adjacent CN lands.

(iii) Marathon contribution to be based on:

A. amount of design flow from Marathon lands directed westerly in the Esplanade sewer;

B. amount of design flow from Central Park in accordance with proportionate participation in cost sharing shown on Schedule "T";

C. two-thirds of the amount of design flow from Esplanade right-of-way, to the extent that the Esplanade is Marathon's responsibility;

(b) Sewer section along Esplanade from John Street Westerly:

(i) City contribution to be based on one-third of the amount of design flow from Esplanade right-of-way;

(ii) CN contribution to be based on amount of design flow from all adjacent CN lands and two-thirds of the amount of design flow from Esplanade right-of-way;

(c) Sewer Section on John Street from Esplanade to Rees Street Slip:

(i) City contribution to be based on amount of design flow calculated as in (a) and (b) above, plus one-half of the amount of design flow from the John Street right-of-way;

(ii) CN contribution to be based on amount of design flow calculated as in (a) and (b) above, plus * one-half of the amount of design flow from the John Street right-of-way;

(iii) Marathon contribution to be based on amount of design flow as calculated in (a) above.

Notwithstanding the foregoing, CN shall pay for Marathon's share of the costs of the sewer section referred to in this subsection (c) at the time of installation, and the City agrees, if requested by CN, to attempt to recover on behalf of CN all amounts paid by CN under this Section 4.01(2) on account of Marathon's share of such costs.

Notwithstanding the foregoing, if the Commissioner of Public Works elects to proceed with the sewer section referred to in subsection (a) prior to Marathon commencing development of its lands, the City shall pay for Marathon's share of the costs of such section of the storm sewer. CN shall co-operate with the City in the design and construction of such section of the storm sewer and CN shall pay for its share of the costs of such storm sewer at the time of installation.

(d) In the event that there is any oversizing of any storm sewer required to accommodate the contributing design flows for lands outside the Railway Lands, the City shall be responsible for the additional costs of such oversizing payable in the same manner as the City Infrastructure Cost.

Section 4.02 - Payment by City

(1) The City shall pay to CN the City Infrastructure Cost relating to each Infrastructure Element (together with interest at the Prime Rate calculated on amounts which the City would have been required to pay if payments were made by

the City periodically as contemplated by Section 4.02(2) hereof on the basis of the Progress Certificates, such interest to commence thirty (30) days after receipt by the City of each such Progress Certificate in respect of amounts set forth therein and excluding interest on holdbacks and late payment charges between CN and the Contractor). Notwithstanding anything herein contained to the contrary, no interest shall be calculated or accrue or be payable in respect of any Infrastructure Element until the preliminary title opinions have been given in accordance with Sections 5.11(6), 6.01(5) and 8.03(4). Such payment shall be made within thirty (30) days after receipt by the City of the Approved Completion Certificate for the last Infrastructure Element (other than the unnamed Cul-de-sac) in the Stadium Precinct (the "Final Completion Certificate"), but where any Infrastructure Element is conveyed to the City, the City's payment shall be made within thirty (30) days of the later of such conveyance and the date of receipt of the Approved Completion Certificate for such Infrastructure Element. Except as may be otherwise specified in this Agreement, all other costs payable by the City shall be paid within thirty (30) days after the City is notified of such cost and interest at the Prime Rate shall commence on the expiry of the said thirty (30) day period until the date of payment by the City.

(2) The City may, at the option of the Commissioner of Public Works, pay to CN the City Infrastructure Cost relating to each Infrastructure Element to the extent completed as verified by each Progress Certificate evidencing prior payment of such amount by CN and otherwise in a form that has been approved by the Commissioner of Public Works, with the City payments to exclude the City's portion of holdbacks required by the Construction Lien Act. Such payment shall be made within thirty (30) days after receipt by the City of each such Progress Certificate. Interest shall be payable at the Prime Rate on amounts payable by the City commencing on the later of payment of such amount by CN (unless CN directs the City's payment to be paid directly to the appropriate contractor) or thirty (30) days after receipt by the City of a Progress Certificate until the date of payment by the City.

Section 4.03 - Inspection of Records

CN shall direct each Consulting Engineer to allow any duly authorized representative of the City to inspect the books and records upon which he has relied in the preparation of any Progress Certificate or Completion Certificate forthwith upon receipt of a written request from the City representative to the Consulting Engineer and CN shall make its books and records available to the extent necessary to verify the matters set forth in any Progress Certificate, Completion Certificate or Final Completion Certificate.

Section 4.04 - Adjustments

Following receipt of the Final Completion Certificate (or any Completion Certificate where payments are made by the City based on Progress Certificates), CN or the City, as the case may be, shall from time to time, within thirty (30) days after written demand, pay to the other any adjustments which are necessary to ensure that the total portion of the payments made by the City and CN are in accordance with Schedule "T" hereto and the provisions of this Agreement.

ARTICLE V

INFRASTRUCTURE - STREETS AND SERVICES

Section 5.01 - Timing of Infrastructure

(1) It is presently anticipated that the Stadium Precinct Infrastructure will be provided in accordance with the Infrastructure Phasing Schedule. The parties recognize, however, that, subject to Section 5.01(2) hereof, the actual pace of development will be governed by many factors (some of which are beyond their control) such as market conditions and opportunities, interest rates and the general state of the economy, and the parties cannot therefore be bound in any way, subject to Section 5.01(2) hereof, to meet such Schedule. The City and CN will co-operate with each other so as to enable the Infrastructure Phasing Schedule to be met so

far as is reasonably possible and so as to minimize any delays arising therefrom.

(2) CN acknowledges that the following Stadium Infrastructure Elements shall be provided and operational for public use by the Stadium Opening Date for periods of Stadium operation for events if the Stadium is to open:

(a) the Municipal Services;

(b) the Streets (except for the Unnamed Cul-de-sac) together with the connections with existing highways referred to in Section 5.04 hereof;

(c) the Spadina Avenue Improvements referred to in Section 5.03(2) hereof;

(d) the following pedestrian Infrastructure, Parks and open space:

(i) the Northern Linear Park on the north side of the Peter Street Extension, including the NLP Retaining Wall;

(ii) the John Street Corridor as shown on Schedule "I" and the John Street Bridge as shown on Schedule "R";

(iii) the Peter Street Bridge as shown on Schedule "R" hereto;

(iv) the Pedestrian Walkway as shown on Schedule "M" hereto (subject to the provisions of Section 5.15);

(v) pedestrian connections from the CN Terminal Building to the east side of York Street and to GO Transit platforms between Simcoe Street and west of York Street (subject to any necessary agreements with GO Transit and other authorities and CN agrees to cooperate fully and without delay regarding any such agreements);

(vi) a pedestrian connection below Esplanade from the bus parking site shown on Schedule "D" hereto to the CN Plaza;

(vii) Tower Park West as shown on Schedule "I";

(viii) Tower Park East Phase One as shown on Schedule "I";

(ix) CN Plaza as shown on Schedule "H"; and

(x) John Street Park lying north of the Railway Corridor as shown on Schedule "K".

(e) the bus parking facilities as shown on Schedule "D";

(f) the Utilities.

(3) In the event that any of the foregoing matters referred to in Section 5.01(2) are not constructed and operational for public use to the extent required by the Commissioner of

Public Works by the Stadium Opening Date, the City may at its option: (i) refuse to permit the Stadium to open; and (ii) until the foregoing matters referred to in Section 5.01(2) are completed and operational for public use, CN shall, unless otherwise permitted by the Commissioner of Public Works, apply for no further building permits within the Stadium Precinct, provided nothing in this Section 5.01(3) shall allow the City to revoke any previously issued building permits. CN and the City agree and acknowledge that for the purposes of the Building Code Act R.S.O. 1980, c. 51, the provisions of this Agreement shall be deemed to be other applicable law within the provisions of Section 6(1) thereof or of any successor statute thereto. CN shall notify The Stadium Corporation of the provisions in this Agreement in favour of the City allowing the City to delay the opening of the Stadium if requested by the City by reason of any of the Stadium Precinct Infrastructure referred to in Section 5.01(2) not being completed.

(4) CN shall use its reasonable best efforts (but without being required to make any payment solely on account of securing the consent of CP or Marathon) to reach an agreement with Marathon and CP as soon as possible to remove or cause the removal of the Hi-Line Railway as soon as possible, with the costs of such removal to be paid by the parties to such agreement and upon such removal, to complete the Streets in

the manner shown on Schedule "B" forthwith after such removal.

Section 5.02 - Streets

(1) CN will construct or cause to be constructed the Streets as shown on and in accordance with Schedules "A", "B", "C", "E", "F" and "G" hereto, consisting of:

(a) Peter Street, including the portion thereof comprising the Peter Street Bridge, which will extend from the southern boundary of Front Street West southerly across the Rail Corridor, and will then turn west and run parallel to the Rail Corridor, connecting with the east boundary of the existing Spadina Avenue, as shown on Schedule "A" and in addition to the Peter Street Bridge to be within the lands designated as Parts 66 through 69 inclusive and 72 through 74 inclusive, and if required by the Commissioner of Public Works within Parts 51, 65, 70 and 71 on Schedule "S-1" hereto ("Peter Street").

(b) An unnamed local street extending southerly from the southerly limit of the east/west portion of Peter Street to the northerly boundary of Esplanade, as shown on Schedule "A" hereto and being the lands designated as Part 92 on Schedule "S-1" hereto (the "Unnamed Street");

(c) An unnamed local cul-de-sac street extending south from the southerly boundary of Esplanade terminating in a cul-de-sac * north of * Southern Linear Park, as shown on Schedule "A" hereto and being the lands designated as Parts 75 and 76, on Schedule "S-1" hereto (the "Unnamed Cul-de-sac"). The Unnamed Cul-de-sac is not required to be constructed by CN prior to the Stadium Opening Date;

(d) John Street will be widened and improved as shown on Schedule "A", including a new righthand turn lane, between Lakeshore Boulevard West and Esplanade, more particularly described as Parts 83, 84, 85, 86 and 36 "S-1" hereto ("John Street");

(e) Subject to Section 5.11(8), Esplanade will be constructed from the eastern limit of Spadina Avenue on a curved alignment terminating at a point east of the east side of John Street as shown on Schedule "A" hereto, being the lands designated as Parts 87, 88, 89, 90, 91, 38 and 39, on Schedule "S-1" hereto (the "Esplanade") and the Esplanade shall include left turn channelization lanes at the intersections with the Loop Street and along the north side of Esplanade, a layby lane or layby slots as approved by the Commissioner of Public Works at key Stadium entry and exit points;

(f) Unnamed local loop street commencing on the south side of Esplanade approximately on the alignment of Peter Street and extending south from Esplanade turning easterly parallel to Lakeshore Boulevard West then turning northerly to the southerly limit of Esplanade, shown on Schedule "A" hereto and to be within the lands designated as Parts 79, 80, 81, 82, 96 and 97 on Schedule "S-1" hereto (the "Loop Street).

(2) CN shall retain at its cost a soils consultant to prepare a report directed to the Commissioner of Public Works and to his satisfaction analysing the effect of placing required fill material on the existing ground forming the Streets in order to achieve the necessary approved grades, with such report to include recommendations as to foundation requirements for the Municipal Services and the Utilities and as to pavement designs.

(3) The Unnamed Cul-de-sac shall be constructed as CN requires but no later than when required by the Commissioner of Public Works to service proposed development of the Development Sites in the Stadium Precinct or to service proposed development of the adjoining precinct to the west. The Commissioner of Public Works shall not require the Unnamed Cul-de-sac to be constructed prior to an application for site plan approval pursuant to Section 40 of the Planning Act having been approved by the City for any such Development Site or for a portion of the adjoining precinct and CN acknowledges that the Unnamed Cul-de-sac may be required prior to construction on any such Development Site or on the adjoining precinct. The conveyance of the Unnamed Cul-de-sac

shall expressly provide and renew the intention of the parties hereby expressed that all development rights accruing to the Unnamed Cul-de-sac shall be for the benefit of CN lands directly abutting on each side of the Unnamed Cul-de-sac and that all such development rights shall be reserved in favour of CN with one-half of such development rights for the benefit of CN lands abutting on the west side of the Unnamed Cul-de-sac and with the remaining one-half of such development rights for the benefit of CN lands abutting on the east side of the Unnamed Cul-de-sac.

(4) CN agrees that it shall arrange for detailed hydraulic calculations concerning the Streets grades to be submitted to the Commissioner of Public Works for his approval and CN agrees that such changes as may be required by the Commissioner of Public Works shall be made to such grades.

(5) CN shall provide a 20-metre (66-foot) minimum right-of-way for all Local Streets, save and except for the east-west portion of the Unnamed Loop Street required for the servicing of the Metropolitan Toronto Pumping Station, which can be 15 metres (50 feet) in width.

(6) The typical road cross sections are shown on Schedule E, and for any streets that the City is cost sharing, CN shall be solely responsible for all installations in the shaded area shown on Schedule E except for hydro, gas and Bell Telephone

and the City shall share the cost on all installations above such shaded area shown on Schedule E.

Section 5.03 - Spadina Avenue Improvements

(1) CN, without charge and forthwith upon the request of Metro, shall confirm and quit-claim in favour of Metro its interest in the lands designated as Part 14 on Schedule "S-1" hereto, including any interest CN may have in the existing Spadina Avenue bridge structure, being a 132-foot right-of-way for the reconstruction of Spadina Avenue between Front Street West and Lakeshore Boulevard.

(2) CN recognizes that the improvements which the City has required be provided and operational and open to the public by the Stadium Opening Date will consist of the widening of the whole of Spadina Avenue, including construction of the New Spadina Avenue Bridge, between Front Street West and Lakeshore Boulevard to six (6) lanes plus a LRT right-of-way in the centre of Spadina Avenue, together with all intersections as shown on Schedules "A" or "B" as applicable and together with a connection under the Spadina Avenue Bridge and Spadina Avenue to the western extent of Spadina Avenue road allowance with a vertical connection to the proposed Spadina LRT platform and a direct pedestrian connection to continue Northern Linear Park to the west side of Spadina Avenue (collectively referred to as the "Spadina Avenue Improvements"). Prior to the commencement of the

Spadina Avenue Improvements, CN shall submit a functional plan of Spadina Avenue from Front Street to Lakeshore Boulevard, for the review and approval of the Metro Commissioner of Roads and Traffic and the Commissioner of Public Works, which design shall accommodate, to the greatest extent possible, the operational grade requirements for the Spadina LRT/streetcar while maintaining an at-grade intersection at Esplanade and Spadina Avenue which does not significantly increase the currently proposed grade.

(3) It is contemplated that the Spadina Avenue Improvements which are required by the City and Metro to be open for the Stadium Opening Date shall be constructed as a Metro project. CN shall contribute to the cost of the Spadina Avenue Improvements net of all provincial subsidies applicable to such work (such subsidies to include seventy-five per cent (75%) of the cost of the New Spadina Avenue Bridge and of the cost of the extra width of the road and special road features attributable to the proposed Spadina LRT right-of-way and fifty per cent (50%) of the balance of the cost of the improvements) in accordance with a cost-sharing commitment to be entered into between Metro, CN and such other parties as may be appropriate. CN agrees that if such commitments to provide the aforesaid provincial subsidies and to enter into the aforesaid cost-sharing arrangements in a form and content satisfactory to the City has not been delivered to the City at least fourteen (14) days prior to the Hearing Date, the

City shall be entitled to request an adjournment of the OMB Hearing pending receipt of satisfactory commitments.

Section 5.04 - Connection with Existing Highways

(1) In constructing the Streets, CN shall construct intersections with existing highways as shown on Schedule "P" with the design to be approved by the Commissioner of Public Works in accordance with Article III and, where applicable, the Metro Commissioner of Roads and Traffic. Specifically, CN shall construct:

(a) an intersection of the new east/west extension of Peter Street with Spadina Avenue;

(b) an intersection of the north/south extension of Peter Street with Front Street West;

(c) an intersection of John Street with Lakeshore Boulevard West as shown on Schedule "P" including the four basic lanes and a separate channelized right turn lane and appropriate radii to permit heavy truck and bus turning movements and CN shall submit for the approval of the Commissioner of Public Works a detailed plan of this intersection showing the proposed geometrics and a traffic operations analysis taking into account a four-way intersection operation;

(d) an intersection of Esplanade with Spadina Avenue; and

(e) an intersection of Spadina Avenue with Lakeshore Boulevard West.

(2) CN agrees that the improvements referred to in Section 5.04(1)(c) are to be provided and operational by the Stadium Opening Date unless CN submits to the City further traffic studies that demonstrate to the satisfaction of the Commissioner of Public Works that a three-lane configuration as shown on Schedule "A" hereof would be acceptable until such time as the Hi-Line Railway is removed.

Section 5.05 - Sidewalks

CN will construct the sidewalks, lighting standards, tree pits and plantings shown on Schedules "F" and "G" which shall be included as part of the Streets. It is understood that the form of the lighting standards shown is intended to illustrate their scale only and not their detailed design. In addition, CN shall provide under the sidewalks in a manner acceptable to the Commissioner of Parks and Recreation and the Commissioner of Public Works adequate soil for the planting of trees, sufficient to allow such trees to grow to maturity. The elevations of all sidewalks shall correspond to the elevations of the streets which they adjoin, as shown on Schedule "G" and shall be acceptable to the Commissioner of Public Works.

Section 5.06 - Municipal Services

(1) CN shall construct the proposed sanitary and storm sewers, water main, force main and John Street sewer outfall (as presently contemplated by Schedule "C") required for the Stadium Precinct whether within or outside the Stadium Precinct (such services being herein referred to as the "Municipal Services"). The Municipal Services shall be completed and operational and available for connection to the City services by the Stadium Opening Date.

(2) The City shall assume all of the Streets and the Municipal Services in the manner referred to in Section 3.11. CN shall convey the Municipal Services to the City at the time of conveyance of the Streets in which such Municipal Services are located, or upon assumption where the Municipal Services are not located within any of the Streets subject to the terms of this Agreement.

(3) The City will, without charge, permit CN to construct the proposed John Street storm water outfall in the existing easement which the City has obtained from the boundary of the Stadium Precinct to the John Street slip as shown on Schedule "C"; provided that the Commissioner of Public Works is satisfied that the easement is sufficient for such purpose. The cost of the construction of this outfall will include the restoration of the lands disturbed by such construction, which cost will be included as part of Infrastructure Cost of the John Street storm water outfall.

(4) The City shall also at CN's expense, except for the storm sewer connection which is included as part of the Infrastructure Cost of the storm sewers and to be shared in accordance with the provisions of this Agreement (but without any payments to the City), make available to CN as required by CN all permissions required by CN to connect all services to the existing services in the streets adjoining subject to the approval of the Commissioner of Public Works to the method of making such connections and the location thereof, but not where the service is a Metro responsibility.

Section 5.07 - Natural Gas Service

CN shall be responsible for co-ordinating the scheduling and implementation of gas services in accordance with the requirements of Consumers' Gas and the Public Utilities Co-ordinating Committee and CN shall obtain the approval of the Commissioner of Public Works to the appropriate location and the amount of capacity of gas mains for the Stadium Precinct. The City acknowledges that gas mains may be located within any road allowances in the Railway Lands in accordance with the City's normal practice and in a location satisfactory to the Commissioner of Public Works and subject to such installation being made in accordance with the City's standards. CN will provide Consumers' Gas with any easements necessary for the purposes of the Stadium Precinct, without charge, across or under any of its lands. CN shall be entitled to negotiate with Consumers' Gas the form and substance of the easement agreement and the location of any such easement (which easement is to be located in a manner so as to minimize so far as is reasonably possible the interference with the use of the lands for development purposes). CN's obligations under this Section 5.07 shall be satisfied with respect to each Development Site once the development on such Development Site is completed incorporating the requirements of Consumers' Gas.

Section 5.08 - Telephone Service

CN shall be responsible for co-ordinating the scheduling and installation of telephone services in accordance with the requirements of Bell Canada and the Public Utilities Co-ordinating Committee and CN shall obtain the approval of the Commissioner of Public Works to the appropriate location of telephone services for the Stadium Precinct. The City acknowledges that telephone services may be located in any road allowance in the Railway Lands in accordance with the City's normal practice and in a location satisfactory to the Commissioner of Public Works and subject to such installation being made in accordance with the City's standards. CN will provide to Bell Canada any easements necessary for the purpose of the Stadium Precinct, without charge, across or under any of its lands. CN shall be entitled to negotiate with Bell Canada the form and substance of the easement agreement and the location (which easement is to be located in a manner so as to minimize so far as is reasonably possible the interference with the use of the lands for development purposes). CN's obligations under this Section 5.08 shall be satisfied with respect to each Development Site once the development on such Development Site is completed incorporating the requirements of Bell Canada.

Section 5.09 - Electrical Services

CN shall be responsible for co-ordinating the scheduling and implementation of electrical services in accordance with the requirements of Toronto Hydro and the Public Utilities Co-ordinating Committee and CN shall obtain the approval of the Commissioner of Public Works to the appropriate location of electrical services in the Stadium Precinct. The City acknowledges that electrical services may be located in any road allowances in the Railway Lands in accordance with the City's normal practice and in a location satisfactory to the Commissioner of Public Works and subject to such installation being made in accordance with the City's standards. CN will provide to Toronto Hydro any easements necessary for the purposes of the Stadium Precinct, without charge, across or under any of its lands. CN shall be entitled to negotiate with Toronto Hydro the form and substance of the easement agreement and the location (which easement is to be located in a manner so as to minimize so far as is reasonably possible the interference with the use of the lands for development purposes). CN's obligations under this Section 5.09 shall be satisfied with respect to each Development Site once the development on such Development Site is completed incorporating the requirements of Toronto Hydro.

Section 5.10 - Transit Facilities

(1) CN shall, as soon as possible and in any event prior to the Hearing Date, obtain a commitment from The Stadium Corporation in a form satisfactory to the Commissioner of Public Works to consult with the appropriate officials of the TTC and operators of downtown parking facilities and report back for the approval of the Commissioner of Public Works and the Commissioner of Planning and Development with a specific plan of action at least one (1) year prior to the Stadium Opening Date and commitment by The Stadium Corporation to implement, at its cost, a comprehensive public transportation information program prior to the Stadium Opening Date which emphasizes the advantages of travelling to the new Stadium using the public transportation system and which presents information on available parking locations. Such information program shall be for an initial term of three (3) years and shall contain a means of reviewing it at least three (3) months prior to its expiry to determine whether the program should be extended. CN shall cooperate fully and without charge with The Stadium Corporation in such consultation and report process.

(2) If requested by the Commissioner of Public Works, CN shall design and construct, to the satisfaction of the Commissioner of Public Works, Esplanade to incorporate a landscaped median as shown on Schedule "F". Such median shall, if the City so

determines, be available for a possible transit right-of-way. Nothing in this Section 5.10(2) shall obligate CN to contribute to the cost of such transit facilities, nor shall anything in this Section 5.10(2) be deemed to relieve CN from cost sharing for such improvements on an equitable basis as may be determined in the future.

(3) CN and the City shall, as soon as possible, request that the Province of Ontario provide a GO Transit Station in proximity to Spadina Avenue and CN shall provide GO Transit, Provincial and Municipal Authorities with its full co-operation in facilitating the establishment of such a facility, including any necessary pedestrian connections. Nothing in this Section 5.10(37) shall obligate CN to contribute to the cost of such a facility, nor shall anything in this Section 5.10(3) be deemed to relieve CN from cost sharing for such improvements on an equitable basis as may be determined in the future.

(4) CN shall, as soon as possible, prepare a report, for the review and approval of the TTC, Railway Lands Steering Group, the Commissioner of Public Works and the Commissioner of Planning and Development, on any improvements that may be required at Union Station and St. Andrew Station as a result of the development of the Stadium and the Stadium Precinct, including the necessary phasing and costing of any such improvements. Nothing in this Section 5.10(4) shall be deemed to impose on CN the responsibility for the costs of

such improvements, nor shall anything in this Section 5.10(4) be deemed to relieve CN from cost sharing for such improvements on an equitable basis as may be determined in the future.

Section 5.11 - Conveyance of Streets to City

(1) CN shall convey or cause to be conveyed to the City certain lands for Streets in accordance with the provisions of this Section 5.11 and shall include the title to all bridge structures forming part of such Streets but not the lands forming part of the Rail Corridor. Such conveyances shall transfer freehold title or leasehold title as set out in Section 5.11(2) and shall be effected in consideration of the covenants on the part of the City contained in the Agreement but without payment of any monies to CN or the City except as otherwise set forth herein. The conveyances comprise the following:

(a) Peter Street, as described in Section 5.02(1)(a) hereof;

(b) Unnamed Street, as described in Section 5.02(1)(b) hereof;

(c) The Unnamed Cul-de-sac, as described in Section 5.02(1)(c) hereof;

(d) John Street, as described in Section 5.02(1)(d) hereof save and except Parts 36, 84, 85 and 86 on Schedule S-1 hereto;

(e) Esplanade, as described in Section 5.02(1)(e) hereof save and except Parts 38, 39, 87, 88, and 89 on Schedule "S-1" hereof; and

(f) The Loop Street, as described in Section 5.02(1)(f) hereof save and except Parts 81 and 82 on Schedule S-1 hereof.

(2) CN may at its option convey to the City title to the Streets referred to in Section 5.11(1) by way of lease for a term of forty (40) years with an option in favour of the City and exercisable at any time during the term to be effective to purchase the Streets at the end of the term for One Dollar ($1.00). Any such lease shall be in the form attached hereto as Schedule "Z" and shall otherwise be in form and substance satisfactory to the City Solicitor, failing which the transfer of Streets shall be by freehold title in the manner referred to in Section 5.11(1) hereof.

CN shall have the right to require the City to exercise and complete its purchase option as expeditiously as reasonably possible at any time during the term of the lease on not less than sixty (60) days' prior written notice.

(3) CN shall convey each of the Streets to City no later than the date of assumption by the City, which assumption shall be carried out in the manner referred to in Section 3.11 hereof.

(4) CN shall execute registrable conveyances of all of the lands referred to in section 5.11(1) and shall place such conveyances in escrow with the City Solicitor or such other party as CN and the City may agree upon as soon as possible following the execution of this Agreement but in any event prior to the Order Date. If CN has failed to deliver into escrow any transfers or conveyances that are required to be delivered by it under this Agreement prior to the Order Date, including without limitation the Parks conveyances, or failed to cause the delivery into escrow of any other approvals, conveyances or transfers contemplated by this Agreement to be delivered prior to the Order Date, the City may, at its option, request that the OMB defer the issuance of any such order and CN shall support the City before the OMB with such deferral request. The date on which the OMB commences or is scheduled to commence its hearing to approve the Stadium Precinct By-law is herein called the "Hearing Date." Before such date, CN agrees at its expense to prepare and register such Reference Plans as may be required to effect registration of all of the transfers and conveyances contemplated by this Agreement. The conveyances of the Streets shall automatically be released and deemed delivered to the City on the assumption of the Streets by the City.

(5) CN covenants and represents to the City that at the time of delivery of each of the conveyances given pursuant to this Agreement, it will have good title to the lands to be conveyed pursuant to Section 5.11(1) free and clear of encumbrance, subject to the Permitted Encumbrances and subject to the licences in a form and location satisfactory to the Commissioner of Public Works permitting the following:

(i) a pedestrian connection under Esplanade from the bus parking shown on Schedule "D" to the CN Plaza; and

(ii) the Stadium Service Tunnel under Esplanade shown as Part 88 on Schedule S-1 hereof provided that such location is subject to the approval of the Commissioner of Public Works.

The City acknowledges that CN may wish to apply for additional underground links during either the design stage of the Street or the Development Review Process and such additional underground links shall be subject to the approval of the Commissioner of Public Works and the provisions of the Streets By-law.

(6) CN agrees to obtain at its expense and to deliver as soon as possible a preliminary title opinion from its solicitors, Messrs. Blake, Cassels & Graydon, addressed to the City in the usual form wherein such solicitors opine to the City that as of the date of such opinion (having searched appropriate

public registers and publicly available information and such other searches as would a purchaser's solicitor in respect of similar lands purchased from CN) (i) upon registration of all of the freehold conveyances provided for in this Agreement, City will in each case acquire fee title to the lands being conveyed good and free from encumbrances, save for the Permitted Encumbrances and such other matters which are outstanding together with a CN covenant to remove such matters by the time of conveyance; and that (ii) in the case of leasehold conveyances, the leasehold title of the City shall rank subsequent in priority only to the freehold title of the owner of the freehold, which freehold title shall be good and free from encumbrance save for Permitted Encumbrances and such other matters which are outstanding together with a CN covenant to remove such matters by the time of conveyance. CN shall obtain at its expense and deliver at the time of conveyance to the City a final title opinion from its solicitors, Messrs. Blake, Cassels & Graydon, addressed to the City in the usual form wherein such solicitors opine to the City that (having searched appropriate public registers and publicly available information and such other searches as would a purchaser's solicitor in respect of similar lands purchased from CN) (i) upon registration of all of the freehold conveyances provided for in this Agreement, City will in each case acquire fee title to the lands being conveyed good and free from encumbrances, save for the Permitted Encumbrances; and that (ii) in the case of leasehold conveyances, the leasehold title of the City shall rank subsequent in priority only to the freehold title of the owner of the freehold, which freehold title shall be good and free from encumbrance save for Permitted Encumbrances. Notwithstanding the foregoing, if upon completion of the Streets, Parks, Municipal Services or any other Infrastructure Element that are to be assumed by the City and after the date that the City would otherwise have completed processing for assumption purposes (but for the title not being in conformity with the foregoing provisions) the Streets, Parks, Municipal Services or other Infrastructure Element title for any of the foregoing items is not in conformity with the foregoing provisions, the City shall not be required to assume any such item and CN shall, at its cost, keep such item available for public use and maintain any such item to the usual municipal standards for such an item until title for such item is in conformity to the foregoing provisions and title has been conveyed to the City, together with and subject to Permitted Encumbrances.

(7) Subject to the other provisions of this Agreement, the parties agree that the City through the City Solicitor may request the OMB not to proceed with the hearing to approve the Stadium Precinct By-law, or to withhold the release of the final order of the OMB approving the Part II Plan and the Stadium Precinct By-law until such time as:

(i) the reference plans referred to in Section 5.11(4) have been registered and the registrable conveyances in Section 5.11(4) and Section 8.01(3) have been delivered to the City Solicitor, in accordance with the provisions of this Agreement;

(ii) the terms and schedules of this Agreement or in the Environmental Agreement have been finally completed in a form which permits registration against the Stadium Precinct and any other land against which it is contemplated in this Agreement that the City is to register in accordance with the provisions of this Agreement; and

(iii) the agreements referred to in Section 5.11(8) have been delivered to the City.

(8) The parties acknowledge that the portions of Esplanade excluded in Section 5.11(1)(e) and of John Street excluded in Section 5.11(1)(d) and of the Loop Street excluded in Section 5.11(1)(f) are now owned by Metro, Marathon and CP, as the case may be except that Part 84 excluded in Section 5.11(1)(e) is owned by the City. If at least fourteen (14) days prior to the Hearing Date agreements from Metro, Marathon and CP, as the case may be, which are to be in form and substance satisfactory to the City Solicitor confirming the agreements by such parties to transfer such portions of Esplanade, Loop Street and John Street to the City are not delivered to the

City, the City shall be entitled to request an adjournment of the OMB hearing and CN shall support such request for an adjournment until alternative agreed upon arrangements have been made. Without limiting the generality of the foregoing, such agreements shall provide that registrable freehold conveyances of such lands (or leases on the same terms as set forth in Section 5.11(2), mutatis mutandis,) are to be placed in escrow with the City Solicitor on the same terms as contained in Section 5.11(4) prior to the Order Date. The City shall receive good title to such lands free and clear of encumbrance subject only to Permitted Encumbrances. If such conveyances are not delivered to the City prior to the Order Date, the City shall be entitled to request the OMB to withhold the release of the final order of the OMB approving the Part II Plan and the Stadium Precinct By-law until such conveyances are received. CN shall support any request by the City for the delay in the issuance of the OMB order until such time as the City has received such conveyances in a satisfactory form.

Section 5.12 - Naming of Streets

The Streets shall be named by the City as set forth in Schedule "O", except that the Unnamed Street, the Unnamed Cul-de-sac and Loop Street shall be named applying the usual policies for naming of streets in the City of Toronto, and in implementing such policies, the City shall consider a list of names to be proposed by CN.

Section 5.13 - Pumping Station

(1) The parties acknowledge that the Pumping Station is required to be relocated to accommodate the Stadium and that such relocation will be made pursuant to an agreement between, inter alia, CN and Metro. As soon as any such agreement has been settled, CN shall provide a true copy of it to the Commissioner of Public Works. In the event of the relocation of the New Pumping Station to the Southern Linear Park, CN shall enter into agreements to ensure that such relocation will be made in the manner contemplated by Section 6.03(7), (8) and (9) hereof.

(2) CN shall develop the watermain system on the basis of the implementation of a new direct connection to the New Pumping Station and shall confirm the sizing of this system by means of computerized hydraulic calculations that are to the satisfaction of the Commissioner of Public Works.

Section 5.14 - Bus Parking

(1) If permanent bus parking facilities for not less than 125 buses have not been incorporated within the Stadium in a manner satisfactory to the Commissioner of Public Works, CN shall on or before the Stadium Opening Date construct facilities for parking and handling of not less than 125

buses, in the location and according to the specifications set forth in Schedule "D" on a temporary basis, including a pedestrian connection from such temporary parking facility under Esplanade to the CN Plaza, until development occurs on the Development Site on which the temporary bus parking is located. The layout of the temporary facilities shall be modified to the satisfaction of the Commissioner of Public Works to include access and circulation aisles between the rows of bus parking and shall be maintained by CN or its successor in title to the Development Site on which the temporary bus parking is located only until permanent bus parking facilities are available. Such temporary or permanent bus parking facilities shall be required to remain only so long as the Stadium continues in existence and only to the extent the zoning for the Stadium continues to require bus parking facilities for the operation of the Stadium on such Development Site, 1* which is not being provided elsewhere as permitted by the zoning. CN shall obtain by the Order Date a commitment from The Stadium Corporation that they will use their reasonable best efforts to encourage that the loading and unloading of passengers from the bus operations are contained in the bus parking areas and until such time as the Streets are assumed to discourage such loading and unloading on the Streets.

(2) If the permanent bus parking facilities have not been incorporated within the Stadium or elsewhere as permitted by

the zoning as contemplated by Section 5.14(1), CN shall execute and deliver to the City prior to the Stadium Opening Date a registrable agreement in a form satisfactory to the City Solicitor that imposes on the bus parking site shown on Schedule "D" the covenants set out in Section 5.14(1) and the covenants set out in this Section 5.14(2) as covenants to run with and bind such lands. Such agreement shall confirm that when development occurs on the Development Site on which the temporary bus parking facilities are located, such Development Site shall not be built upon unless any such development incorporates permanent bus parking facilities for not less than 125 buses (or such smaller number of buses as may then be required by the City), together with maintenance obligations and with the design and location of such facilities, including access, egress and handling areas, to be subject to the approval of the Commissioner of Public Works. Such covenant shall remain in force until the first to occur of (i) 200 years after the Commencement Date, (ii) demolition of the Stadium, or (iii) amendment of the zoning for the Stadium to remove the requirements for bus parking facilities on such Development Site. CN shall obtain a covenant from any successor in title to the Development Site on which the temporary bus parking facilities are located agreeing to comply with the provisions of this Section 5.14(2).

(3) As part of the Development Review Process for the first Development Site on the block east of the Unnamed Cul-de-sac, CN agrees to prepare and submit at its sole cost a design satisfactory to the City, to provide for acceptable pedestrian access between the south end of the Unnamed Cul-de-sac and the Southern Linear Park, including if necessary the complete enclosure of the bus route within Parts 77, 78, 93 and 94 of Schedule S-1 hereto and the provision of stairs and landscaping. If and when the need for bus parking on the Development Block referred to on Schedule D hereto expires as provided for in Section 5.14(1) or 5.14(2) CN agrees to convey to the City Parts 77, 78, 93 and 94 shown on Schedule S-1 hereto on the same basis as the conveyance of the Unnamed Cul-de-sac.

Section 5.15 - Pedestrian Walkway

(1) On or before the opening date of the Stadium, CN shall, at its cost (unless a commitment in a form and content satisfactory to the City Solicitor has been received at least twelve (12) months prior to the Stadium Opening Date from Marathon agreeing to construct Esplanade to York Street prior to the Stadium Opening Date and unless the Commissioner of Public Works is satisfied that on completion of such construction of Esplanade to York Street, there is a suitable north/south pedestrian connection with adequate pedestrian capacity, including that related to the necessary

transportation facilities, from the intersection of York Street and Esplanade to Union Station) provide and construct a pedestrian connection (including all necessary consents and conveyances to make such a connection legally effective) from the Stadium to the east side of York Street in the vicinity of Union Station along one of the following routes, such routes being more particularly shown designated Option 1, Option 2, and Option 3 on Schedule "M" and to be constructed substantially in accordance with Schedule "M" hereto:

(i) Pedestrian Walkway across the lands owned by CN and the lands owned by Marathon generally along the alignment of Esplanade, north across a pedestrian bridge at the Simcoe Street alignment to the CN Terminal Building and easterly to York Street.

(ii) Pedestrian Walkway across Tower Park East along the northerly limit of the hotel site on the lands owned by Marathon adjacent to Tower Park East, north across a pedestrian bridge at the Simcoe Street alignment to the CN Terminal Building and easterly to York Street, subject to the relocation as required by Article VI.

(iii) Pedestrian Walkway across Tower Park East to its easterly limit, northeasterly across a pedestrian bridge to the easterly limit of the fire access route at the south boundary of the Metropolitan Toronto Convention Centre complex, and easterly over Simcoe Street and through the CN Terminal Building to York Street.

(2) The Pedestrian Walkway to be implemented shall be selected by CN in its sole discretion, provided that alternatives (ii) or (iii) shall only be selected if CN is unable to obtain the necessary rights required for alternative (i) across Marathon lands. If the Pedestrian Walkway is across Tower Park East, CN shall be responsible for the additional costs thereof, as provided in Article VI hereof. The City acknowledges that upon the construction and assumption of Esplanade from John Street to York Street and the Commissioner of Public Works being satisfied that there is a suitable north/south pedestrian connection, with adequate pedestrian capacity, including that related to the necessary transportation facilities from the intersection of York Street and Esplanade to Union Station, CN may leave the bridge portion of the Pedestrian Walkway in place or upon prior notice to the Commissioner of Parks and Recreation and to the Commissioner of Public Works, at its option remove such Pedestrian Walkway, with such removal to be performed in a manner satisfactory to the Commissioner of Public Works and the Commissioner of Parks and Recreation. CN may at its option offer the bridge portion of the Pedestrian Walkway to the City and if the City elects to accept such bridge, the City will thereafter assume and be responsible for the maintenance of such bridge.

(3) The City shall be granted a non-terminable licence over the Pedestrian Walkway for a one-year term renewable 199 times for an aggregate term of 200 years (but only so long as the Stadium continues to exist) for which no fees will be paid and otherwise on terms and conditions satisfactory to the City Solicitor and for the benefit of the public to use the Pedestrian Walkway at all times for access between the vicinity of the Stadium and York Street. Such licence and all renewal rights shall terminate once the pedestrian connection from the Stadium along Esplanade to York Street and north to Union Station as contemplated by Section 5.15(1) and (2) has been completed and is available to the public. CN shall maintain at all times the portion of the Pedestrian Walkway within any of the Parks and the portion of the Pedestrian Walkway comprising the bridge. The portion of the pedestrian connection through the CN Terminal Building shall be maintained at all times by CN, subject to Section 5.18.

Section 5.16 - The Toronto Terminals Railway Company Approvals

(1) CN confirms it has obtained from TTR and appended to this Agreement as Schedule "U" the approval of TTR in favour of the City to permit the construction and use of the John Street Bridge and the Peter Street Bridge, subject only to review by TTR of detailed working drawings to ensure that the railway operating constraints and applicable engineering standards required to be accommodated in designing a railway

crossing and structures related thereto are adequately addressed and subject to obtaining any necessary Canadian Transport Commission approvals. The John Street Bridge and the Peter Street Bridge shall be constructed by CN and shall be transferred to the City after completion subject to the expiry of the Warranty Period. CN shall obtain approvals from TTR in favour of the City to permit the construction and use of the Spadina Avenue Improvements and the Pedestrian Walkway, subject only to a similar review as contemplated in the approval to John Street Bridge and Peter Street Bridge. CN agrees that if such approvals in a form satisfactory to the City have not been delivered to the City by the date City Council reaffirms the Stadium Precinct By-law, the City shall be entitled to request an adjournment of the OMB Hearing pending receipt of satisfactory approvals. The said Pedestrian Walkway shall be constructed and maintained as provided in Section 5.15 and the Spadina Avenue Improvements will be constructed in the manner contemplated by Section 5.03. Forthwith upon execution of this Agreement, CN shall apply at its cost or cause the TTR to apply for any necessary Canadian Transport Commission approvals to the John Street Bridge, the Peter Street Bridge, the Spadina Avenue Improvements and the Pedestrian Walkway and shall use its best efforts to satisfy any conditions imposed as a term of giving such approvals. In the event that such approvals are not available, CN agrees to provide such alternate access routes that are satisfactory to the City.

(2) CN shall fully support the obtaining of any approvals from TTR in favour of the City and Metro (as may be applicable) for the Simcoe Street Tunnel and for the construction and use of the necessary bridge and access ramps for the proposed Front Street extension to the Gardiner Expressway and to otherwise cooperate fully and without cost in obtaining such approvals, including without limitation any approvals required from the Canadian Transport Commission. CN further agrees that it shall not transfer its interest in the TTR without any such transferee agreeing to assume the obligations of CN under this Section 5.16(2). Nothing in this Section 5.16(2) shall be deemed to impose on CN the costs of constructing such Simcoe Street tunnel or Front Street extension.

Section 5.17 - Conveyance of Station Street to CN

(1) Subject to the open portion of Station Street as shown as Part 44 on Schedule "S-1" hereto being validly and effectively closed in accordance with the requirements of The Municipal Act, and subject to the provisions of Section 5.17(2) hereof, the City will, for nominal consideration, transfer to CN in fee simple all of the City's rights to all of Station Street comprising 66 feet in width ("Station Street") subject to Permitted Encumbrances and subject to the

southerly 40 feet thereof designated as Parts 42 and 43 on Schedule "S-1" being subject to an existing lease given by the City to TTR dated May 31, 1915 as amended from time to time, including the last amendment dated October 3, 1949 (and the City shall, on the request of CN prior to such conveyance, accept a surrender of such lease at any time upon reasonable notice), provided that CN shall indemnify the City for any claims under such lease to the TTR occurring after the transfer of title to CN. Such conveyance to CN may also be subject to reservation in favour of Marathon of certain access and all other rights of Marathon under existing agreements in respect of 123 Front Street and pedestrian access to the teamway west of the York Street tunnel. CN agrees that the City's obligations concerning the conveyance of Station Street shall be satisfied if the City conveys or offers to convey to any adjoining landowner any portion of Station Street in accordance with the requirements of the Municipal Act (unless CN delivers prior to such conveyance a direction from such adjoining landowner authorizing the conveyance to CN of such landowner's entitlement). CN further agrees that the City will be deemed to have satisfied its obligations concerning the conveyance of Station Street for the purpose of being entitled to Parks conveyances (and in the event a by-law has become final and binding to remove a holding designation on the first of the Marathon Precincts in the Railway Lands, for the purpose of being entitled to the conveyances required from CN under Section 5.18) if it has taken all steps within the City's jurisdiction to close and to convey Station Street, but is prevented from doing so by the commencement of legal proceedings by a third party.

If the City is prevented from closing or conveying Station Street by such legal proceedings, the City shall defend with due diligence any action against the City to the extent that it is legally entitled and if the City fails to so defend, CN may defend any such action on behalf of the City. Forthwith upon such action being determined in favour of the City, the City shall complete the conveyance of Station Street to CN, subject to Section 5.17(2).

(2) Notwithstanding anything in this Agreement to the contrary, the City shall not be required to convey Station Street until such time as the latest of the following matters have been completed:

(i) the completion of the Stadium Infrastructure Elements required by Section 5.01(2) hereof;

(ii) the completion of the Parks' design pursuant to Article VII hereof;

(iii) the conveyances of the Streets (excluding the Unnamed Cul-de-sac) referred to in Section 5.02 hereof; and

(iv) the conveyance of the Parks to the extent required as set forth in Section 6.01 at the time the City is entitled to convey Station Street.

Section 5.18 - Simcoe Street Tunnel

Upon the later to occur of the City complying with or having been deemed to have complied with its obligations pursuant to Section 5.17(1) and City approving a budget for the construction of the Simcoe Street Tunnel underneath the Rail Corridor south of Front Street West, CN will convey to the City or cause to be conveyed to the City, without payment, all necessary easements, rights of way, sub-leases or approvals of any nature in perpetuity and in a form and having a priority satisfactory to the City Solicitor so as to permit the removal and demolition of that portion of the CN Terminal Building now constructed over the projection south of the Simcoe Street right of way, so as to allow for the construction of the extension of Simcoe Street southerly from Front Street West under the Rail Corridor to the southerly limit of the Rail Corridor. For any consents required from TTR, CN shall be deemed for the purpose of this Section 5.18 to have satisfied its obligations therefore so long as it proceeds in accordance with the provisions of Section 5.16(2) hereof. In the event the City undertakes any such demolition, the City will promptly and in a workmanlike manner, reconstruct (as hereinafter provided) the exterior and interior of the CN Terminal Building and demolish or reconstruct, as appropriate, the portion of the CN

Terminal Building west of Simcoe Street (and if Esplanade has not been constructed to York Street, reconstruct any pedestrian connections affected by the City's demolition) so as to protect it from the elements and to render it reasonably fit for occupancy and suitable for its previous purposes using materials and finishes compatible with the balance of the CN Terminal Building. Nothing herein shall require the City to be responsible for upgrading the standards of the CN Terminal Building, unless CN agrees to be responsible for any additional costs arising from such upgrading. The City acknowledges that nothing in this Agreement shall interfere with the use of any portion of the CN Terminal Building as part of a pedestrian bridge or route access or route across the Rail Corridor unless and until and only so long as such use is rendered unsafe by the demolition as may be determined in the opinion of the Commissioner of Public Works. CN shall not be obligated to provide an alternative pedestrian connection during the period of disruption caused by the City's construction activities. The City shall be responsible for any physical damage to the CN Terminal Building caused by the City's construction activities and shall indemnify CN from and against any costs, loss or claims by third parties as a result of any negligent conduct of such work by the City.

Section 5.19 - Release of Easements

The City shall use its reasonable best efforts (but without being required to make any financial contributions or concessions) to secure from Consumers' Gas, Bell Canada, Toronto Hydro or other applicable body the release of any existing easements which have become surplus or redundant as each Development Site is developed.

ARTICLE VI

PARKS - CONVEYANCES

Section 6.01 - Conveyances of Parks

(1) CN agrees to convey or cause to be conveyed to the City certain lands for parks in accordance with the provisions of this Article VI. Such conveyances shall transfer freehold or leasehold title as set out in this Article and shall be effected in consideration of the covenants on the part of the City contained in the Agreement but without payment of any monies to CN or the City. The conveyances shall comprise the following:

(a) Northern Linear Park, * in accordance with Section 6.02 hereof;

(b) Southern Linear Park, in accordance with Section 6.03 hereof;

(c) Tower Park West, in accordance with Section 6.05 hereof;

(d) Tower Park East, in accordance with Section 6.06 hereof; and

(e) Community Park, in accordance with Section 6.07 hereof.

(2) The conveyances set forth in Section 6.01(1)(a), (c) and (d) shall all take place simultaneously as provided in Section 6.01(3). The conveyance set forth in Section 6.01(1)(b) shall take place in accordance with Section 6.03 and the conveyance of the Community Park shall take place as provided in Sections 6.07 and 6.01(3). All conveyances contemplated by this Agreement shall be in form satisfactory to the City Solicitor and shall be suitable for registration in the proper Land Registry Office.

(3) CN shall execute registrable conveyances of all of the lands referred to in section 6.01(1)(a), (c), (d) and (e) (save for the CP Lands) and of those parts of the SLP Lands referred to in Section 6.03(2) and shall place such conveyances in escrow with the City Solicitor no later than five (5) Business Days prior to the Order Date. No later than five (5) Business Days prior to the Order Date, CN agrees: (i) at its expense to prepare and register in the proper Land Registry Office such Reference Plans as may be required to effect registration of the conveyances being delivered as provided in this Section 6.01(3) and to illustrate the JSC Lands for legal description purposes; and (ii) to deliver to the City Solicitor agreements in registrable form to impose on CN Plaza and the JSC Lands the covenants provided for in Sections 6.10 and 6.04(3) respectively. The said conveyances

and agreements shall be released and deemed delivered to the City as provided in Section 6.01(7). The conveyances of the CP Lands shall be executed and delivered in accordance with the terms of Section 6.11.

(4) CN covenants and represents to City that at the time of delivery of each of the conveyances required to be conveyed by it pursuant to this Agreement, it will have good title to the lands to be conveyed pursuant to the Agreement (save for the CP Lands) free and clear of encumbrance, subject only to the Permitted Encumbrances.

(5) CN shall obtain at its expense and deliver as soon as possible a preliminary title opinion from its solicitors, Messrs. Blake, Cassels & Graydon, addressed to the City in the usual form wherein such solicitors opine to the City that as of the date of such opinion (having searched appropriate public registers and publicly available information and such other searches as would a purchaser's solicitor in respect of similar lands purchased from CN) (a) upon registration of the leasehold conveyances provided for in this Agreement, City will in each case acquire leasehold title to the lands being conveyed good and free from encumbrance, save for such rights as are reserved in favour of CN herein, and that the leasehold title of the City shall rank subsequent in priority only to the freehold title of the owner of the freehold, which freehold title shall be good and free from encumbrance

save for the Permitted Encumbrances and such other matters which are outstanding together with a CN covenant to remove such matters by the time of conveyance and (b) in the case of the Community Park Lands, that CN is the freehold owner thereof and that their title is good and free from encumbrance save for the Permitted Encumbrances and such other matters which are outstanding together with a CN covenant to remove such matters by the time of conveyance. CN shall obtain at its expense and deliver at the time of conveyance to the City a final title opinion from its solicitors, Messrs. Blake, Cassels & Graydon, addressed to the City in the usual form wherein such solicitors opine to the City that (having searched appropriate public registers and publicly available information and such other searches as would a purchaser's solicitor in respect of similar lands purchased from CN) (a) upon registration of the leasehold conveyances provided for in this Agreement, City will in each case acquire leasehold title to the lands being conveyed goodand free from encumbrance, save for such rights as are reserved in favour of CN herein, and that the leasehold title of the City shall rank subsequent in priority only to the freehold title of the owner of the freehold, which freehold title shall be good and free from encumbrance save for the Permitted Encumbrances and (b) in the case of the Community Park Lands, that CN is the freehold owner thereof and that their title is good and free from encumbrance save for the

Permitted Encumbrances. Notwithstanding the foregoing, if upon completion of the Streets, Parks, Municipal Services or any other Infrastructure Element that is to be assumed by the City and after the date that the City would otherwise have completed processing for assumption purposes (but for the title not being in conformity with the foregoing provision) the Streets, Parks, Municipal Services or other Infrastructure Element title for any of the foregoing items is not in conformity with the foregoing provisions, the City shall not be required to assume any such item and CN shall, at its cost, keep such item available for public use and maintain any such item to the usual municipal standards for such an item until title for such item is in conformity to the foregoing provisions and title has been conveyed to the City, together with and subject to Permitted Encumbrances.

(6) The parties agree that the City through the City Solicitor may request the OMB to withhold the release of the final order of the OMB approving the Stadium Precinct By-law until such time as:

(i) the Reference Plans referred to in Section 6.01(3) have been registered and the conveyances in Section 6.01(2), the CN Plaza Agreement and the JSC Agreement in registrable form have been delivered to the City Solicitor, in accordance with the provisions of this Agreement;

(ii) the terms and schedules of this Agreement or in the Environmental Agreement have been finally completed in a form which permits registration against the Stadium Precinct and where and to the extent permitted herein against other portions of the Railway Lands owned or controlled by CN to be conveyed or against which covenants are to be imposed;

(iii) the* conveyances in escrow of the CP Lands required in Section 6.11 have been delivered to the City as provided in that Section;

CN agrees not to object to any such request of the City.

(7) Conveyances and agreements delivered to the City Solicitor to be held in escrow under Section 6.01(3) shall be automatically released and delivered to the City in accordance with the provisions of this Section 6.01(7). In each case the date on which such delivery is effected shall be known and referred to as the "Release Date".

Tower Park East and Tower Park West - The Release Date for the conveyance of the TPE Lands and the TPW Lands shall be the earliest to occur of the following three events:

(i) the Stadium Opening Date;

(ii) the date on which a by-law becomes final and binding to remove a holding designation on the first of the Marathon Precincts in the Railway Lands;

(iii) March 1, 1996.

Northern Linear Park - Phase I - The Release Date for the conveyance of * the Northern Linear Park shall be the same date as the Release Date for the TPE Lands.

Northern Linear Park - Subsequent Phases - The conveyances of the remainder of the NLP Lands shall be determined on a Precinct by Precinct basis.

Southern Linear Park - The Release Date for the conveyance of SLP Lands shall be determined in accordance with the provisions of Section 6.03(3).

Community Park - The Release Date for the conveyance of the Community Park shall be the earlier of the following two dates to occur:

(i) March 1, 2006;

(ii) the date upon which the City gives notice of its intention to take delivery of title, which notice may be given at the City's discretion at any time after the happening of the earlier to occur of the events identified in Subsections (i) and (ii) of Section 6.03(3).

JSC Agreement and CN Plaza Agreement - The JSC Agreement and the CN Plaza Agreement shall be released from escrow on the same Date as the Release Date for the TPE Lands. *

Station Street Condition - Notwithstanding the foregoing provisions of this Section 6.01(7), and the satisfaction of conditions for release from escrow of conveyances for Parks as therein provided, conveyances of Parks shall not be released from escrow until the City has satisfied the Station Street Condition. The "Station Street Condition" shall be deemed to have been satisfied when the City has transferred or is deemed to have transferred all of the City's rights to Station Street in accordance with the provisions of Section 5.17. CN's obligations herein respecting construction, installation and maintenance of Parks as herein provided shall not be diminished or effected by the failure to have satisfied the Station Street Condition.

(8) CN shall execute any short forms of agreement, any applications or consents or any documents requested by the City to effect registration in the proper Land Registry Office against each one of the Parks of the interest of the City pursuant to this Agreement. CN agrees that any party subsequent in interest to it shall be subject to the right of the City to receive the conveyances herein provided with title as herein provided, it being agreed that the interest of the City to the lands to be conveyed to it pursuant to any

and all provisions of this Agreement is a vested interest, only the date of actual delivery of which is subject to determination as herein provided.

(9) The City shall be entitled to enter upon any or all of the Parks prior to the Release Date relating to such Park for purposes of soil or other tests, surveys or conducting preliminary design work, or any other reasonable purpose.

Section 6.02 - Northern Linear Park

(1) CN shall grant or cause to be granted to the City leasehold title to NLP - Phase I (as defined below) and shall do so by grants of Park Leases. The lands on which the Northern Linear Park is to be located are herein called the "NLP Lands".

(2) The Northern Linear Park∧* ("NLP - Phase I") shall be located on the lands on the south side of and adjacent to the Rail Corridor and shall extend from the eastern limit of Spadina Avenue road allowance on the west to the eastern limit of the Peter Street road allowance on the east unless the extension under Peter Street is not constructed in which case the Northern Linear Park shall only extend to the western limit of the Peter Street road allowance "S-1".∧*

The extension of NLP - Phase I passing under Spadina Avenue and the Spadina Avenue Bridge shall have a width equal to the width of Part 16 on Schedule S-1 hereto.

(3) Conveyance of lands on which will be located the NLP - Phase I shall reserve in favour of CN, the right from time to time to enter upon such Lands upon reasonable advance notice in writing to the City for the following purposes: (i) to install, maintain and repair the NLP Retaining Wall; (ii) to construct the Peter Street Bridge; (iii) to construct Peter Street; and (iv) to construct any public streets adjoining NLP - Phase I. The said reservations of rights shall be subject to a proviso that CN shall use its best efforts to minimize the extent and duration of its interference with and disruption of improvements and plantings on, and the use and enjoyment of the NLP Lands, while it is exercising its right of entry and further that it will restore and replace such improvements and plantings to a design and condition satisfactory to the Commissioner of Parks and Recreation (who shall not thereby be entitled to require an increase in the standards thereof). The foregoing reservations in favour of CN shall expire for each such item upon assumption of such item by the City.

All Park Leases for NLP - Phase I shall expressly provide and renew the intention of the parties hereby expressed that all development rights accruing to NLP - Phase I (except for clarity that portion under Peter Street, if any) shall be for the benefit of CN lands directly opposite fronting on the south side of Peter Street and that all such development rights shall be reserved in favour of CN for the benefit of such lands on the south side of Peter Street and shall not be utilized on NLP - Phase I.

(4) CN shall secure in its arrangements with Metro as contemplated in Section 5.03(3) a right in favour of the City to extend the Northern Linear Park under Spadina Avenue, which connection under Spadina Avenue forms part of the Spadina Avenue Improvements.

(5) CN shall at its expense construct, repair and maintain and shall retain title to the NLP Retaining Wall until assumption by the City in the manner herein contained. The "NLP Retaining Wall" means the retaining wall to be constructed by CN along the northerly limit of the NLP - Phase I Lands; the NLP Retaining Wall shall extend from the west limit of the Peter Street road allowance without interruption to the east limit of the Spadina Avenue road allowance. Until assumption, CN shall maintain and repair the NLP Retaining Wall as necessary to keep it in good repair. The NLP Retaining Wall shall be designed by the Consulting Engineer engaged under the provisions of Article III, provided CN shall be solely responsible for such design costs. The design shall be subject to the approval of the Commissioner of Public Works and the TTR. In view of the special support aspects of the NLP Retaining Wall within the Stadium Precinct, including the increase in height that will be required if the connection under Peter Street to the Stadium

is not built, the parties confirm their intentions that the maintenance and repair obligations relating to the NLP Retaining Wall be shared as hereinafter set out except that CN's sole obligations in respect of the maintenance of the NLP Retaining Wall after assumption by the City shall be to make the one time payment set out in the next following sentence and the City shall after assumption perform the actual maintenance of the NLP Retaining Wall and shall thereafter pay the balance of the costs of maintenance and restoration thereof. The City intends to assume the NLP Retaining Wall upon its assumption of NLP - Phase I and at the time of assumption of the NLP Retaining Wall by the City, CN as its full contribution to the maintenance thereof (but subject to the City's rights during the Warranty Period) shall pay to the City an amount equal to five per cent (5%) of the capital cost of the NLP Retaining Wall, unless CN and the Commissioner of Public Works agree to some different amount. Prior to or contemporaneously upon assumption by the City, CN shall obtain for the City a registerable right of way for maintenance purposes immediately to the north of the NLP Retaining Wall with a width sufficient for a truck to have reasonable access to the NLP Retaining Wall with the access point to the said right of way to be satisfactory to the Commissioner of Public Works and the right-of-way to be subject to Permitted Encumbrances only and, if applicable, the title of TTR to the Rail Corridor.

(6) CN shall complete construction of the NLP Retaining Wall in sufficient time to complete NLP - Phase I and the Streets required to be constructed by the Stadium Opening Date.

Section 6.03 - Southern Linear Park

(1) The Southern Linear Park shall be located on those lands in the Stadium Precinct and adjacent to the Stadium Precinct shown as all of Parts 1, 6, 11 and 12 on the draft reference plan annexed as Schedule "S-1", and on the John Street Railway Bridge (as defined in Section 6.03(5)). The Southern Linear Park is intended to be extended, in future precincts, of at least equal width, in a westerly direction running generally along the Hi-Line Railway and northwards to the Community Park, all as illustrated on Map "D" annexed to the publication entitled "Railway Lands Part II: Final Report, Official Plan Statements and Zoning By-law" dated July 1985. The lands on which the Southern Linear Park are to be located are herein referred to as the "SLP Lands."

(2) CN agrees to convey or cause to be conveyed leasehold title to the portion of the SLP Lands shown as Parts 1, 6, 11 and 12 on Schedule "S-1" hereto to the City by a grant or grants of a Park Lease or Park Leases as herein provided. The lease for the portions of the SLP Lands shown as said Parts 1, 6, 11 and 12 shall be delivered to the City in registrable form no later than five (5) days prior to the Order Date to be held in escrow for delivery as herein provided.

(3) City acknowledges that the SLP Lands are now used by CN and CP for railway track purposes and that there is located thereon two railway tracks, which railway tracks are herein called the "Hi-Line Railway." The "Hi-Line Railway" shall include all portions of these rail lines located on the Railway Lands. The Park Lease to the City for the SLP Lands referred to in Section 6.03(2) shall be held in escrow until and shall be effectively delivered at such time as (i) CN determines that satisfactory alternate arrangements with CP or Marathon or otherwise have been made for the CN freight by-pass provided by the Hi-Line Railway, and (ii) the Hi-Line Railway has been permanently removed.

Provided, if such events have not occurred within five (5) years of the Commencement Date the lease shall, if not sooner released, be released from escrow and effectively delivered to the City at the City's request any time thereafter, upon 60 days prior written notice by the City to CN. If on delivery of the said lease the Hi-Line Railway is still so required to be used by CN, City shall at the time of delivery of the said lease grant to CN a sublease by way of leaseback of the SLP Lands including the John Street Railway Bridge and the Hi-Line Railway on a fully "net to landlord" basis and without payment of any rent or other fees other than amounts payable to reimburse for costs and expenses attributable to the Hi-Line Railway and its use, for a term equal to the term of the lease to City, but which shall end on the happening of the first to occur of the two events recited in sub-paragraphs (i) and (ii) in this subsection 6.03(3). At the request of CN, City will agree to a reservation of a right on the same terms in the Park Lease, instead of the said leaseback. Such leaseback, or reservation, as the case may be, shall permit the exclusive use, operation and maintenance of the Hi-Line Railway by CN and shall be without prejudice to CN's continuing obligation to remove the Hi-Line Railway as herein provided.

(4) As future precincts are developed, CN shall grant or cause to be conveyed the remaining portions of the SLP lying west of the western limit of Spadina Avenue.

(5) CN agrees to convey to the City absolute title free and clear of encumbrances (but subject to Permitted Encumbrances) to the existing bridge across John Street (or any replacement thereof) (the "John Street Railway Bridge") which forms part of and serves the Hi-Line Railway. The conveyance of the SLP Lands referred to in Section 6.03(2) shall include a conveyance of the said bridge, and delivery of the conveyance of the said bridge shall be effected upon delivery of leasehold title to the SLP Lands as described in Section 6.03(2).

CN covenants to maintain the John Street Railway Bridge in a good and safe condition until conveyance thereof to the City and without prejudice to CN's maintenance obligations during the Warranty Period therefor to the extent herein provided. CN shall make all repairs and modifications to the said bridge in accordance with the obligations in Article VII so that when transferred to the City, it will be suitable for use as part of the Southern Linear Park.

(6) CN agrees to make every reasonable effort (but without being required to make any payment solely on account of securing the consent of CP or Marathon) to facilitate and complete the permanent relocation of the Hi-Line Railway by June 1, 1988 in order to permit conveyance of the SLP Lands (as described in Section 6.03(2)), construction of the Southern Linear Park thereon and conveyance of other lands on which the Hi-Line Railway is located, all as herein provided, as soon as possible.

(7) The parties acknowledge that the John Street Water Pumping Station (the "Pumping Station") is required to be relocated to accommodate the Stadium and that the new Pumping Station (the "New Pumping Station") may be relocated in such a manner that it will lie, in part, under the Southern Linear Park, as is illustrated on Schedules "A" and "B" hereof. Temporary interruption of the use or removal of the Hi-Line Railway to accommodate construction of the New Pumping Station shall not be deemed to be termination of use of the Hi-Line Railway as contemplated in Section 6.03(3) if CN gives notice to the City that it intends to reinstate and use the Hi-Line Railway

upon completion of the New Pumping Station, and provided it does reinstate the Hi-Line Railway.

(8) If the New Pumping Station is located on the SLP Lands, CN covenants that it shall be located below an elevation which will permit construction on its roof of the Southern Linear Park designed in accordance with Article VII. CN agrees to impose such a restriction for the benefit of the City and the SLP Lands upon that portion of the SLP Lands to be occupied by the New Pumping Station. CN acknowledges that design details and provision for construction and maintenance of such improvements under the Southern Linear Park shall be dealt with and provided for in the Development Review Process for the New Pumping Station.

(9) If CN conveys to Metro freehold title to that portion of the SLP Lands on which is to be located the New Pumping Station (being Part 1 on Schedule "S-1"), CN will cause Metro to be bound by CN's obligations herein as they apply to said Part 1 and the granting to City of a Park Lease therefor. CN shall obtain from Metro its covenant to construct or cause to be constructed the New Pumping Station in such a manner as to permit construction on its roof of the linear parkway proposed for the Southern Linear Park by the City and that the structure of the New Pumping Station shall comply with the requirements of Section 6.03(8).

(10) The conveyance of Part 12 on Schedule S-1 shall expressly provide and renew the intention of the parties hereby expressed that all development rights accruing to the said Part 12 shall be for the benefit of CN lands described as Part 13 on Schedule S-1 and that all such development rights shall be reserved in favour of CN for the benefit of CN lands described as the said Part 13 on Schedule S-1.

Section 6.04 - John Street Corridor

(1) The John Street Corridor shall be located on the land (herein called the "JSC Lands") shown as Parts 26, 29 and 30 on Schedule "S-1".

(2) The John Street Corridor is intended to be used in perpetuity to provide an open pedestrian link from John Street and the John Street Bridge to Esplanade as part of a larger design to maintain an open pedestrian access and to provide an open, unobstructed view plane from Front Street to Lakeshore Drive, subject to Section 6.04(3)(iv).

(3) CN shall enter into an agreement in registrable form (herein called the "JSC Agreement") in favour of the City whereby it will impose restrictions and will covenant on with respect to the JSC Lands as follows:

(i) the City, all ratepayers thereof and the public at large (including without limiting the generality of the foregoing, occupants, patrons and persons doing business with the CN Tower, Tour of the Universe and Telesat) shall have the right to pass and repass at all times twenty-four hours a day, seven days a week, along and over the John Street Corridor. Nothing herein shall restrict the right of CN to prohibit passage of motor vehicles (except as herein provided) or to prohibit activities not permitted in a public park of the City of Toronto or to prohibit the use of the John Street Corridor by persons whose acts or omissions are unduly disruptive of the use and enjoyment of the John Street Corridor by the public at large or of reasonable access to the adjoining facilities or structures;

(ii) if required to make the covenants contained in this Section 6.04(3) run with the JSC Lands so that the covenant is binding on successors and assigns, CN shall give as a further assurance of the said covenant a restatement of the said covenant as a grant of easement burdening the JSC Lands and benefitting the TPW Lands and the TPE Lands;

(iii) the said rights shall be satisfied during the life of the Stadium by such a right to pass over the structure shown on Schedule "I" adjacent and to the east of "Stadium Edge" as illustrated on Schedule "I" including the stairways and the access ramp and stairs forming part of the structure illustrated and the lower level of the John

Street Corridor adjacent to Tower Park West, it being the intention that pedestrians shall always have a right-of-way to pass from John Street to the Stadium and to Esplanade in both northerly and southerly directions over the John Street Corridor;

(iv) CN shall covenant that there shall be no improvements, temporary or permanent, located on or within the JSC Lands which will be located above an elevation equal to the elevation of the southern end of the John Street Bridge save for any which may be approved as part of a Development Review Process for the JSC Lands;

(v) the term of this covenant shall be 2,000 years;

(vi) CN shall be entitled to interfere with the right of public access or, if applicable, the demise of the said right-of-way in favour of the City as provided in sub-paragraph (ii) above from time to time upon reasonable advance notice to the City for purposes of construction, maintenance and repair of the Stadium and its related improvements, or other improvements as may exist subsequent to the demolition of the Stadium provided CN shall minimize the extent and duration of any such interference or interruption;

(vii) CN shall promptly repair and keep in good repair all improvements on the JSC Lands and shall maintain them in good order and condition at its expense and shall keep them free and clear of rubbish, water, snow, and ice;

(viii) There shall be no vehicular traffic permitted on the JSC Lands except for the following:

(a) public emergency vehicles,

(b) vehicles for handicapped persons,

(c) City of Toronto Parks Department vehicles,

(d) Stadium maintenance vehicles when performing maintenance work,

and until the opening of Esplanade along the southern limits of Tower Park East and Tower Park West,

(e) vehicles gaining access to Tower Park East and Tower Park West as permitted by the City, which vehicles shall be permitted at the level of Tower Park West.

(ix) the JSC Agreement shall release the City from any liability for construction, maintenance and repair of the JSC Lands, all of which shall be the responsibility of CN subject to cost sharing of the Park Infrastructure in accordance with Article VII; CN shall indemnify the City for all liability with respect to the JSC Lands;

(x) if CN defaults in any of its obligations under the said JSC Agreement, the City shall have the right on reasonable notice to enter upon the JSC Lands and perform the covenant of CN and to collect its costs therefore in the same manner as it is entitled to employ for taxes in arrears.

The form of the JSC Agreement shall be settled by the parties to the satisfaction of the City Solicitor at least five (5) Business Days before the Hearing Date, failing which the City will be entitled to exercise its rights under Section 6.01(6) to request the OMB to delay commencement of the hearing or, at the option of the City, to withhold the release of the final order until such time as the said agreement has been settled.

(6) The designs of the John Street Corridor and Tower Park West shall include structures to accommodate the ready access from one level to the other for handicapped persons and their vehicles, unless accommodation at all times is provided elsewhere within the Stadium satisfactory to the City.

(7) As part of or at the time of the Development Review Process for the Stadium, if so required by the City, CN shall enter into agreements which will impose on the JSC Lands covenants which will run with the JSC Lands which will limit their use to uses which do not impair public pedestrian access purposes as provided in Section 6.04(2) and which will guarantee the rights to pass and repass as set out in Section 6.04(3)(i), (iii), (iv) and (viii), subject only to the construction

thereon of improvements which by their design preserve such unrestricted right of access in favour of the City and the public at large. Such agreement shall also provide for CN to maintain and repair the structures and improvements so installed.

Section 6.05 - Tower Park West

(1) Tower Park West shall be the public park to be constructed on the lands (the "TPW Lands") consisting of that part of the Stadium Precinct identified on Schedule "I" and shown as Parts 22, 27, 28, 31 and 32 on Schedule "S-1".

(2) CN shall convey leasehold title to the TPW Lands (excluding those portions forming part of the CP Lands) to the City by way of Park Lease (the "TPW Lease"). The lands demised under such Park Lease shall include the surface of the TPW Lands (at the elevation or plane established for the completed Tower Park West) and shall descend to a depth of six feet everywhere except above the existing structure of the Tour of the Universe and any other existing structures, services or facilities within six feet of the surface of the park above which the demise shall descend with respect to the Tour of the Universe to a depth of one foot below the surface, and with respect to any other structures to within one (1) foot of the elevation of such structure and except for a temporary reservation below the surface of that portion of Tower Park West shown as Parts 27 and 28 on Schedule "S-1" for so long

as the Stadium structure or any replacement from time to time exists. Such reservation shall provide that it shall be automatically terminated once the Stadium structure or any replacement is permanently removed and such right of the City shall be registered on title to such reserved portion. The City agrees that where there are any existing services, below-grade facilities or stairwells in the TPW Lands or TPE Lands necessary to serve the CN or Tour of the Universe, or other existing facilities within the Railway Lands, the City shall grant an easement for the same for so long as the services are necessary.

(3) The parties acknowledge that CP and Marathon are the owners of the CP Lands, a portion of which constitute a portion of the TPW Lands. The manner in which the CP Lands are to be conveyed to the City are set out in Section 6.11.

(4) The TPW Lease shall be a Park Lease and shall reserve in favour of CN the right to install, maintain and operate the Subsurface Elements including such limited rights of access as may be reasonably necessary to exercise such rights and subject to such reasonable restrictions as may be imposed by the Commissioner of Parks and Recreation. (The expression "Subsurface Elements" used in this Section 6.04 and in Sections 6.05 and 6.06 shall mean those elements which are possible "CN Tower Parking Garage", "Service tunnel between transformer station and CN Tower", "existing mechanical room,

storage and kitchen facilities adjacent to the CN Tower", "Tour of the Universe," and "a possible link to parking for Telesat" and any other improvements located below the demised premises which are approved by the City in a Development Review Process.)

The right to install and maintain Subsurface Elements shall be subject to preconditions that CN shall covenant to repair and restore all parts of Tower Park West (and Tower Park East as may be the case) to at least the condition they were prior to such work being undertaken and to indemnify the City in connection with such work and to provide insurance against liability and bonds for completion of such work. Such work shall only be permitted in accordance with plans and specifications approved by the City in advance. The City will permit the installation of an air duct or emergency stair exit which encroach onto the TPW Lands if such cannot be reasonably accommodated elsewhere and provided the location and extent thereof shall be subject to the approval of the City, and shall not interfere with the use and enjoyment of TPW. The lease shall limit the use of the lands demised to the City to Park Uses.

(5) The TPW Lease shall include a covenant from City in favour of CN to permit pedestrian access by tenants, occupants and invitees of the Stadium, the CN Tower, Tour of the Universe and other facilities located within such areas to pass over

specifications approved by the City in advance. The City will permit the installation of an air duct or emergency stair exit which encroach onto the TPW Lands if such cannot be reasonably accommodated elsewhere and provided the location and extent thereof shall be subject to the approval of the City, and shall not interfere with the use and enjoyment of TPW. The lease shall limit the use of the lands demised to the City to Park Uses.

(5) The TPW Lease shall include a covenant from City in favour of CN to permit pedestrian access by tenants, occupants and invitees of the Stadium, the CN Tower, Tour of the Universe and other facilities located within such areas to pass over Tower Park West and to gain access thereto provided there is no breach of the covenants and obligations respecting the John Street Corridor set out in Sections 6.04(3) and 6.04(7). CN shall also be entitled to construct or cause to be constructed that portion of the Stadium structure to be located on Parts 27 and 28 of the TPW Lands as illustrated on the Schedules and shall covenant to repair and maintain such improvement during the life of the Stadium.

Section 6.06 - Tower Park East

(1) Tower Park East shall be located on the lands (the "TPE Lands") consisting of that portion of the Stadium Precinct lying immediately to the north of Esplanade, to the east of Tower Park West and the CN Tower Lands, and to the south of

Tower Park West and to gain access thereto. CN shall also be entitled to construct or cause to be constructed that portion of the Stadium structure to be located on Parts 27 and 28 of the TPW Lands as illustrated on the Schedules and shall covenant to repair and maintain such improvement during the life of the Stadium.

Section 6.06 - Tower Park East

(1) Tower Park East shall be located on the lands (the "TPE Lands") consisting of that portion of the Stadium Precinct lying immediately to the north of Esplanade, to the east of Tower Park West and the CN Tower Lands, and to the south of the Rail Corridor, all as illustrated on Schedule "I" and identified as all of Parts 34 and 35 on Schedule "S-1" hereto.

(2) CN shall convey leasehold title to the TPE Lands to the City by grant of a Park Lease. The said Lands may be used by the City only for Park Uses provided that the sundry other uses contemplated in this Section 6.06 shall not constitute breach of this provision.

(3) Subject to the establishment of terms satisfactory to it, City may permit the Hydro Substation to be located under the TPE Lands at a location illustrated on Schedule "J" of this Agreement. Subject to establishment of terms satisfactory to the City, the City may permit the location on the TPE Lands of a Telesat facility, a possible location for which is

illustrated on Schedule "J." The City agrees that CN may enter into a lease with Telesat in a form and content approved by the City, which lease shall provide as a covenant of the tenant an obligation to provide the interpretive program required by the Commissioner of Parks and Recreation. At the time the Park Lease for Tower Park East is released to the City, the City shall accept an assignment of the said lease to Telesat reserving all net monetary benefits from rentals to CN with the exception that the City shall be entitled to the ground rent for the park land occupied by the Telesat facility and with the intention that the City not be required to assume any obligations.

(4) As provided in Section 5.15, CN acknowledges that the City would prefer to have the Pedestrian Walkway located along the southern perimeter of TPE Lands so that pedestrian traffic flow would run along the southern limit of the TPE Lands through the CP Hotel site and from there to Simcoe Street. If this latter arrangement is not achieved, CN shall be responsible for installation of such surface cover in a form satisfactory to the City as may be necessary to create any interim pedestrian walkways required for Stadium access including the diagonal across the TPE Lands (running generally from the southwest corner to the northeast corner as is illustrated on Schedule "I" and M) and CN agrees to remove such walkway as required by the City at such time as

it is possible to locate the Pedestrian Walkway along the southern limit of TPE Lands as aforesaid.

(5) The TPE lease shall exclude the lands upon which the existing structure immediately adjacent to the east side of the CN Tower are located as shown on Schedule J hereto. Further, the TPE lease shall reserve in favour of CN the right to operate and maintain the subsurface mechanical room, kitchen, storage facilities south of the CN Tower or shown outlined as a dashed line on Schedule J hereto as well as all existing services, below-grade facilities or stairwells necessary to serve CN Tower, the Tour of the Universe and other existing facilities within the Railway Lands. All reference plans and legal descriptions of the TPE lands shall be amended by CN to so indicate. CN shall have a right of access over the TPE Lands to maintain such existing structures provided that CN shall covenant to repair and restore the portion of the TPE Lands damaged as a result of such access to at least the condition they were prior to such work being undertaken and provided CN indemnifies the City in connection with such work and provides insurance against liability.

Section 6.07 - Community Park

(1) Community Park shall be located on those lands lying to the west of the Stadium Precinct illustrated as Part 2 on Schedule "S-2".

(2) CN shall convey to the City freehold title to the lands constituting Community Park (the "Community Park Lands"), provided the City will accept a Park Lease for the Community Park if such lease contains, on terms satisfactory to the City, an option exercisable at any time during the term to be effective to purchase at any time after the 40th year of the term the Community Park Lands on sixty (60) days' notice for a purchase price of Two Dollars ($2.00).

CN shall have the right to require that the City exercise and complete its purchase option as expeditiously as reasonably possible at any time during the term of the lease on not less than sixty (60) days' prior written notice.

(3) The conveyance of the Community Park shall reserve in favour of CN a right to construct, maintain, operate and replace or reconstruct from time to time a parking garage facility below the Community Park to serve the parking requirements of Precinct 10 (being the Precinct which includes the lands north of the Rail Corridor, south of Front Street, west of Spadina Avenue and east of Portland Street) east of Portland Street together with such limited rights of access as may be reasonably necessary to exercise such rights and subject to such reasonable restrictions as may be imposed by the Commissioner of Parks and Recreation. The details of location, design, access, repair and maintenance arrangements for, size and specifications of such garage shall be subject

to the approval of City at the time of and shall be considered as part of the Precinct Plan for Precinct 10. Such a garage and its use shall not be allowed to interfere in any material way with Park Uses of the Community Park provided that a sufficient portion of Community Park as determined solely by the Commissioner of Parks and Recreation shall be kept free of buildings and major structures so as to permit construction of a parking garage as aforesaid under such portion, and that such parking structure, if built, shall be designed to accommodate not less than six (6) feet of earth on its roof. CN shall repair and restore all parts of Community Park to at least the condition they were prior to such work being undertaken and to indemnify the City in connection with such work and to provide insurance against liability and bonds for completion of such work. Such work shall only be permitted in accordance with plans and specifications approved by the City in advance. The City shall be indemnified and held harmless with respect to all liabilities, costs and expenses in any way relating to the construction, maintenance, use and operation of such a parking garage. The party seeking to build such a garage shall be responsible at its expense for repair and replacement of all park improvements of the City damaged as a result of such construction and such party shall indemnify the City from and against any costs, loss or claims by third parties as a result of such work. No such garage shall be permitted if parking requirements are satisfied or can be satisfied elsewhere within Precinct 10, and the right to construct or replace such a garage shall terminate when the municipal requirements for such parking end or the GO idling yards south of Front Street have been removed and all rights under the existing leases have been relinquished to enable CN to use such lands for parking purposes. The City shall be entitled to require CN to remove such a garage if it is to be operated for purposes other than those permitted in Section 6.07(3). At any rate, CN shall have the right to reconstruct the garage, from time to time, for the purposes permitted under this Section 6.07(3).

Section 6.08 - Park Use Restriction

Without limiting the provisions of the Stadium Precinct By-law or of the right of the City to zone and rezone in general, the City and CN agree that:

(i) the SLP Lands, and the NLP Lands, shall only be used for Park Uses;

(ii) the John Street Corridor shall be only used for the purposes set forth in Section 6.04;

(iii) the Community Park shall be only used for Park Uses, or for a school or for a school playground or for any combination of such uses and for the purposes of Section 6.07(3) for an underground parking garage;

(iv) Tower Park East shall only be used for Park Uses and for other uses herein referred to for TPE including the uses proposed on Schedules "I" and "J";

(v) Tower Park West shall be used only for Park Uses, for the uses referred to herein including the uses proposed on Schedules "I" and "J" and as part of a pedestrian right-of-way;

provided provision for access by public emergency, fire, ambulance and police vehicles shall also be permitted in any of the Parks.

City agrees that the respective conveyances for the said parcels of land shall provide for such use restrictions.

The expression "Park Uses" as used in this Agreement shall mean such uses as are permitted from time to time within a park designation under the provisions of the general zoning By-law of the City of Toronto in force from time to time.

Section 6.09 - Condition of Lands at Time of Conveyance

(1) CN shall at its expense increase elevations of the surface of lands to be conveyed to the City pursuant to this Agreement by the addition of suitable fill or permitted structures to such levels as have been or will be agreed upon by the parties.

(2) The covenants of CN with respect to condition of and improvements to Parks shall survive any conveyance of title to the City, and shall be renewed in each Park Lease and shall end upon expiration of the Warranty Period provided for in Article VII.

Section 6.10 - CN Plaza

(1) "CN Plaza" shall mean the lands designated as Parts 21 and 23 on Schedule "S-1".

(2) CN shall pay for all costs of construction and installation of CN Plaza. CN covenants that it shall permit pedestrians and the public at large to pass, repass and enjoy the amenities of CN Plaza 24 hours a day, seven days a week. Save as herein provided, no vehicular traffic shall be permitted on CN Plaza. CN covenants not to use CN Plaza or to permit CN Plaza to be used for any other purposes than Park Uses and for pedestrian access to buildings on adjoining lands, and not to construct or permit to be constructed thereon any improvements which are not consistent with or interfere with such uses, or any improvements which are other than park and open space amenities. Nothing herein shall restrict the right of CN to prohibit passage of motor vehicles (except vehicles used by handicapped persons and emergency vehicles) or to prohibit activities not permitted in a public park of the City of Toronto or to prohibit the use of CN Plaza by persons whose acts or omissions are unduly

disruptive of the use and enjoyment of CN Plaza by the public at large or of reasonable access to adjoining facilities or structures as herein provided. Notwithstanding the foregoing, CN shall design CN Plaza to accommodate, and shall permit the passage of emergency vehicles, including fire, police and ambulance vehicles and parks maintenance vehicles of the City. CN Plaza shall be completed not less than thirty (30) days prior to the Stadium Open Date.

(3) CN agrees to execute an agreement (the "CN Plaza Agreement") to impose on the CN Plaza lands the covenants set out in Section 6.10(2) as covenants to run with and bind CN Plaza. These covenants shall bind CN Plaza for 200 years and thereafter for so long as the Stadium is used.

Section 6.11 - CP Lands

(1) The parties acknowledge that a part of the TPW Lands and TPE Lands is now owned by CP and Marathon (which part is marked with diagonal lines on Schedule "C") and that Marathon's and CP's title is partly freehold and partly leasehold. A portion of the said lands marked with cross hatched lines on Schedule C and designated as Part 37 on Schedule S-1 hereto owned by CP and Marathon are herein called the "CP Lands". The portion of the CP Lands so owned by leasehold title is held under a perpetually renewable lease granted by the Toronto Harbour Commissioners. If at least fourteen (14) days prior to the Hearing Date an agreement from Marathon and CP, in a form and

content satisfactory to the City Solicitor, confirming the agreements by such parties to transfer the CP Lands in the manner set forth herein is not delivered to the City, the City shall be entitled to request an adjournment of the OMB Hearing and CN shall support such request for an adjournment until alternative arrangements acceptable to the City are made. Such agreements shall provide that, without prejudice to the City's rights to deal directly with CP and Marathon at the time of the first Marathon Precinct, the leases of such lands in the form of the TPW Park Lease* shall be delivered in escrow to the City Solicitor prior to the Order Date to be released at the same time as the TPW Park Lease or TPE Park Lease.*

(2) The parties acknowledge their mutual intention that the balance of the CP Lands should be acquired and conveyed to the City at no cost to the City to be added to and incorporated into the TPE Lands and the TPW Lands as is illustrated in the Schedules and be subject to the respective Park Leases and all agreements and arrangements with respect to such CP Lands. Both agree to respect and endeavour to bring about this mutual intention as soon as reasonably possible in all future negotiations and dealings with CP and Marathon.

Section 6.12 - Park Leases

(1) Annexed as Schedule "Y" is a form of lease agreed to by the parties which is herein referred to as a "Park Lease". This form of lease shall be amended only to incorporate the special provisions respecting each such demise as provided in this Article VI and in Article VII and as provided in this Section 6.12 including without limitation applicable rights and obligations in respect of each Park and reservation of subsurface and other applicable rights as set out herein. CN agrees that upon any lands that were reserved from any of the Parks no longer being required for their original purposes, such reserved portion shall be added to the Parks.

(2) The lease or leases for the Northern Linear Park shall include an acknowledgment from the City to consider (without obligation) granting rights in favour of the freehold owner of the lands demised to construct subsurface improvements.

(3) Each Park Lease shall have an initial term of 1,000 years. If permitted by law, City shall have the right to renew the lease on the same terms and conditions * for a further term of 1,000 years without any further right of renewal.

Section 6.13 - John Street Park

(1) John Street Park shall mean those lands lying north of the Railway Corridor adjacent to the John Street Bridge illustrated on Schedule "K".

(2) Based on the alternative referred to in Section 6.13(3)(i) hereof, City has obtained agreement from The Royal Bank of Canada ("Royal") to amend the approved park design drawings for the Royal portion of the John Street Park to widen the walkway (the Central Spine as illustrated) by five feet, four inches; Royal has agreed to construct at its expense a decorative metal fence of up to five feet in height along the western boundary of the Central Spine as widened. If CN elects to follow the alternative referred to in Section 6.13(3)(ii) hereof, the City and CN shall cooperate in a reasonable manner to seek Royal's consent, if required, to such alternative.

(3) (i) CN shall make or cause to be made such modifications to the existing entrance and exit doors at the west end of the CN office building at 277 Front Street West (as shown on Schedule "K") as may be required to ensure that such doors will either be left open or will automatically open when approached by pedestrian traffic from either side of the doors. CN agrees that pedestrian traffic shall be entitled to pass through such doors and the hallway to which such doors give access in a north-south direction for an ample time during both before and after all events in the Stadium as required by the City Commissioners of Planning and Developments and Public Works. CN shall maintain or caused to be maintained the said doors and corridors in good repair at all times and an amended

development agreement in a form satisfactory to the City Solicitor between the City and the owner of the CN office building at 277 Front Street West concerning this obligation shall be delivered not later than five (5) days prior to the Order Date;

(ii) As an alternative to Section 6.13(3)(i) above, CN shall have the option to (i) reduce the effective width and thereby the pedestrian flow of the John Street Bridge through the placement of temporary planters (or otherwise if City approves) at the cost of CN by an amount which will be equivalent to the reduction in pedestrian flow through the John Street Park arising from the failure to comply with Section 6.13(3)(i) above, and (ii) to correspondingly increase, at the cost of CN, the width of the Pedestrian Walkway to accommodate an equivalent amount of pedestrian flow as so reduced. CN acknowledges that if it decides to follow the alternative in this Section 6.13(3)(ii), it must do so to reflect the construction timing of the Pedestrian Walkway required by Section 5.15 hereof.

(4) CN acknowledges that Royal and the City have agreed to appoint a committee to monitor the extent to which pedestrian traffic from major events in the Stadium encroach on Park Use aspects of the Royal portion of the John Street Park by using it as a major pedestrian traffic access and egress route for

events in the Stadium. If the committee determines that such encroachment occurs, then Royal at its expense shall be entitled to undertake remedial measures within the boundaries of the Royal portion as may be determined by the committee.

(5) CN shall, at its expense, install all improvements and effect all changes to John Street Park (save for the Royal portion thereof) shown on Schedule "K". Plans, specifications, design and phasing of such improvements shall be governed by the provisions of Article VII.

ARTICLE VII

PARKS - IMPROVEMENTS

Section 7.01 - Consulting Landscape Architects

(1) The City will select and retain jointly with CN certified "Consulting Landscape Architects" to design, supervise and provide contract administration for Community Park and Tower Park East. The expression "Consulting Landscape Architects" as used in this Agreement shall mean a certified landscape architect or firm of landscape architects who are full members in good standing with the Ontario Association of Landscape Architects, with expertise in municipal parks and recreation planning, design and construction. The fees and expense of such Consulting Landscape Architects shall be paid by CN but shall be deemed to be a cost of each such Park to be shared in accordance with the provisions thereof.

(2) CN and the City will jointly select and retain Consulting Landscape Architects to design, supervise and provide contract administration for Tower Park West, John Street Corridor, Northern Linear Park and Southern Linear Park. The fees and expenses of such Consulting Landscape Architects so retained shall be paid by CN but deemed to be a cost of the Park or John Street Corridor to be shared in accordance with the provisions hereof.

(3) The Consulting Landscape Architects appointed in accordance with Sections 7.01(1) and (2) shall be directed to take instructions from both CN and the City. CN acknowledges, however, that its involvement in this process and its instructions to the Consulting Landscape Architects shall be limited to those instructions necessary to ensure that CN interests regarding the quality equivalents and upset costs referred to in Section 7.02(2) and 7.02(3) are complied with and to provide CN's comments on the compatibility of the designs with adjacent development. CN further acknowledges, providing it does not interfere with CN interests as provided for in Sections 7.02(2) and (3) hereof, that all normal instructions to the Consulting Landscape Architect regarding matters of park program, use and detailed design, shall be the responsibility of the City.

(4) CN agrees to submit, subject to the provisions of Section 40 of the Planning Act and this Agreement, an application for

approval of the design of CN Plaza in sufficient time to permit construction to proceed in accordance with Schedule "N". CN shall retain or cause to be retained Consulting Landscape Architects or architect with expertise in urban open space planning, design and construction to design CN Plaza in a manner satisfactory to the City. CN agrees that no costs or consulting fees relating to the design and construction of CN Plaza shall be borne by the City.

Section 7.02 - Parks Design

(1) The City and CN agree that the Parks designs and John Street Corridor and CN Plaza designs to be prepared by the Consulting Landscape Architect shall be based upon the provisions of Section 7.02(2), (3) and (4) and shall have due regard of the program elements and constraints set out in Schedules "H", "I", "J", "K" and "L". It is acknowledged by the parties hereto that the Schedules referred to above do not represent actual design proposals and are provided solely for the purpose of illustrating the general patterns and quality of design to be pursued.

(2) All Parks, John Street Corridor and CN Plaza shall be designed to the satisfaction of the City. The standards of materials and specifications found in the existing parks and areas set out below shall serve in general terms as minimum equivalents which must be met by the Parks, John Street Corridor and CN Plaza set opposite:

Park Name	Equivalent
Tower Park East Tower Park West John Street Corridor	Trinity Park or College Park
	. . .
Southern Linear Park Northern Linear Park	Martin Goodman Trail (permanent section to be constructed between Bay Street and York Street in 1986)
	. . .
Community Park	St. James Park or Stanley Park or Crombie Park
	. . .
CN Plaza	Commerce Court or Nathan Phillips Square or College Park

Notwithstanding the involvement of CN in the design process, all decisions regarding program, the quality of facilities, layout and matters of design detail shall rest with the City which shall have due regard to the design equivalents set out above. The design for Tower Park East and Tower Park West shall ensure full and adequate access for pedestrians and emergency vehicles to the CN Tower, Tour of the Universe and the Stadium and the design of Tower Park West shall be compatible with the Stadium and CN Tower. Any re-design of Tower Park East and Tower Park West during the lifetime of the CN Tower and the Stadium shall be in conformity with the foregoing design requirements. For greater certainty CN shall not be responsible for the cost of redesign of any Park.

The City agrees that the design and future re-design of the Parks shall reflect any existing permitted subsurface and below grade elements and CN agrees that in the exercise of any permitted subsurface rights or reservations, CN shall reflect the design of the Parks. The parties agree that the Park Lease for each of the Parks shall incorporate appropriate provisions relating to subsurface rights.

(3) The designs shall, notwithstanding, be prepared with due regard for the maximum upset capital costs (including design and supervision costs) identified below:

Tower Park East - Phase 1	- $200,000
Tower Park East - Phase 2	- $1,700,000 (95,000 square feet at $18 per sq. ft.)
Tower Park West	- $1,400,000 (58,000 square feet at $24.50 per sq. ft.)
John Street Corridor	- $600,000 (36,000 square feet at $16.60 per square foot)
CN Plaza	- $1,800,000 (46,500 square feet at $38.70 per sq. ft.)
Northern Linear Park and Southern Linear Park	- $525,000 (70,200 square feet at $7.47 per sq. ft.)
Community Park	- $2,000,000

Such maximum amounts shall be increased semi-annually after the date hereof in accordance with the percentage increase in the "Construction Price Statistics" at Toronto, Ontario, as published by Statistics Canada from time to time. If the maximum upset capital costs set forth herein are exceeded by the tendered price for any particular location, the City at its option shall either redesign such location so as to reduce the costs to the maximum allowable or proceed with such original design with the excess costs to be the sole responsibility of the City. For the sake of clarity, the design and supervision costs shall be part of the Parks costs and John Street Corridor costs to be shared as provided herein.

(4) All Parks designs and John Street Corridor and CN Plaza designs shall include reasonable and appropriate accommodation for access by wheelchairs and vehicles for disabled persons.

Section 7.03 - Parks Construction

(1) In accordance with the designs determined pursuant to Section 7.02, CN shall construct or cause to be constructed all of the following: Northern Linear Park, Southern Linear Park, John Street Corridor, Tower Park West, Tower Park East and CN Plaza.

In the case of any of the Parks (but not the John Street Corridor) to which the City is required to contribute subject to the provisions of Schedule "T" hereof, CN will follow or cause to be followed a public tendering process similar to that normally followed by the City for similar City projects put out to tender, such process to be reviewed with and acceptable to the Commissioner of Parks and Recreation. Prior to awarding any contract for work to be cost-shared by the City, CN shall obtain in writing the approval of the Commissioner of Planning and Development and the Commissioner of Parks and Recreation. All tender openings subject to this provision shall occur in a public forum at which a representative of the City, a representative of CN and the Consulting Landscape Architects are present. The Consulting Landscape Architects shall in all cases deliver to the City and CN their recommendations in writing for acceptance of any tender. Prior to any public tender concerning any portion of the Parks or for any horticultural items forming part of the Streets, CN shall notify the Commissioner of Parks and Recreation and shall give the Commissioner of Parks and Recreation an opportunity to propose to do any such work for a specific price. If the City and CN cannot agree on any price proposed by the Commissioner of Parks and Recreation, the public tender process shall be followed, as provided for herein.

(2) The Consulting Landscape Architects in respect of each portion of the Parks Infrastructure or John Street Corridor or CN Plaza, as the case may be, shall prepare complete tender documentation for each of the Parks and John Street Corridor to which the City is contributing a portion of the cost as provided for herein. The Consulting Landscape Architects shall affix their seal and signature to each such construction drawing.

(3) The proposed final constructions drawings for each of the Parks and John Street Corridor shall be delivered to the Commissioners of Planning and Development and Parks and Recreation for approval at least thirty (30) days prior to the giving of notice requesting bids for public tender (if required) pursuant to Section 7.03(1). The Commissioner of Parks and Recreation shall within a reasonable time of the delivery of any construction drawings and tender package either:

(a) return to CN a copy of the construction drawings bearing his approval that the construction drawings are acceptable to him, or

(b) return to CN a copy of the construction drawings together with a written indication of the alterations or additions necessary to render the drawings acceptable to him.

Construction drawings which are returned to CN pursuant to clause (a) above or which are returned to CN after CN has incorporated the alterations or additions arising pursuant to clause (b) above shall be deemed to be and are hereafter referred to as "Approved Park Construction Drawings".

(4) If any changes are required to Approved Park Construction Drawings as a result of site conditions after commencement of construction, Consulting Landscape Architects shall notify the Commissioner of Parks and Recreation promptly of the site

conditions and request approval of the suggested changes or CN may request the approval of the City directly. The Commissioner of Parks and Recreation shall consider and respond to any such request within a reasonable time after request, having regard for prevailing conditions and circumstances. If the Consulting Landscape Architects are of the opinion that there is an emergency arising with respect to any Infrastructure Element by reason of which there is an imminent risk to life, safety or property, CN may, upon such notice, if any, to the Commissioner of Parks and Recreation as may be reasonably possible in the circumstances, perform such work* as may be necessary to avoid such imminent risk. CN shall forthwith give to the Commissioner of Parks and Recreation written notice setting forth the nature of the emergency and specifying the work performed. CN acknowledges that notwithstanding the performance by CN of any work arising from an emergency, all changes to the Approved Construction Drawings shall require the approval of the Commissioner of Parks and Recreation. CN agrees that any remedial work required as a result of the Commissioner of Parks and Recreation not approving the manner in which such emergency work has been performed shall be made to such Infrastructure Element.

(5) Subject to the terms of this Agreement, including without limitation the provisions of Article VI hereof, CN shall have control and discretion over all matters relating to the

construction of the Parks Infrastructure, including the division of the Work into as many separate construction contracts as may seem appropriate to CN, the right to retain and terminate contractors and all other aspects of construction.

(6) Subject to this Section, CN shall not let any contract for the performance of the Park Work in which the City is cost sharing pursuant to the terms of this Agreement until the form and provisions of the contract, the contractor's guarantees and the contractor have been first approved by the Commissioner of Parks and Recreation, which approval shall not be unreasonably withheld. All contracts (whether or not cost*shared by the City) shall provide that representatives of the Commissioner of Parks and Recreation may inspect the construction of all work under the contracts. Prior to the commencement of the Park Work, CN shall file with the Commissioner of Parks and Recreation true copies of all contracts (including all Schedules and drawings) for the Work and a list identifying the subcontractors proposed to be engaged.

(7) CN shall, if it terminates or permits the termination of any agreement pursuant to which a contractor is obliged to carry out and complete the Work or a portion thereof or amends or alters such agreement or permits it to be amended or altered in such a way that the obligations of such a contractor are

reduced or otherwise altered substantially, or engages or permits the engagement of any contractor other than the contractor or contractors named in the agreement or agreements delivered to the Commissioner of Parks and Recreation or any subcontractor other than the subcontractors so identified on the list referred to in Section 7.03(6), given written notice thereof to the City and CN shall obtain the consent of the Commissioner of Parks and Recreation to any such termination, amendment, alteration or hiring, provided nothing herein shall be contrary to the requirements of this Agreement or the Approved Parks Construction Drawings.

(8) CN shall not commence to carry out any portion of the Park Work without first having obtained Approved Parks Construction Drawings for such portion of the Park Work and then giving reasonable prior written notice that it intends to do so to the City with such notice to specify the anticipated date of commencement of the Work.

(9) CN shall perform, or cause to be performed, from time to time as it carries out the Park Work, such tests as contemplated in the tender documents or as may be required by the Commissioner of Parks and Recreation prior to and during construction of any of the Park Infrastructure and shall provide to the City copies of all reports made in connection with such tests. Subject to any additional tests required by

field conditions not contemplated at the time of any approvals to construction drawings or emergency situations, the City shall advise CN of all such tests at the time the Commissioner of Parks and Recreation gives his approval to construction drawings pursuant to Section 7.03(3).

Section 7.04 - Phasing of Parks

Construction of all Parks and John Street Corridor pursuant hereto shall be commenced and completed by CN in accordance with the Infrastructure Phasing Schedule, except that the construction of Community Park shall be commenced when fifty per cent (50%) of the buildable frontage adjacent to Community Park (i.e., the buildable frontages of Esplanade and Portland Street across from the Community Park) is under development. Phase 1 of Tower Park East which is to be constructed at the sole cost of CN (comprising removal of existing parking surfaces and non-park related facilities and installation of the Park facilities shown on Schedule I hereto), Tower Park West, the Northern Linear Park, John Street Corridor and CN Plaza will be developed in conjunction with construction of the Stadium and available for public use not later than the Stadium Opening Date. The Southern Linear Park will be landscaped by CN within twelve (12) months of the permanent removal of the Hi-Line Railway in accordance with Section 6.03 in respect of portions of the Southern Linear Park where development has occurred on adjacent lands and where development has not then occurred on adjacent lands at the time of development of such adjacent lands.

Section 7.05 - Parks Costs

(1) Park Development Costs for all Parks and the John Street Corridor shall be shared in accordance with the provisions of Schedule "T". For the purposes of this Agreement "Park Development Costs" mean:

(a) in the case of parks not located over buildings or structures, all costs of developing the land for parks purposes but not including the cost of preparing a rough graded site for required elevations, free of railway facilities, or of fulfillment of environmental problems pursuant to the Environmental Report; and

(b) in the case of park and open space surfaces located on or over buildings or structures (including the John Street Corridor), all the cost of developing the exposed surface for parks and open space purposes after the construction of the supporting structure but not including the building or structure underneath, or the waterproofing membrances, drainage system, facilities provided primarily for the purpose of gaining access to the Stadium or CN Tower (and which would not otherwise be necessary for the Parks or John Street Corridor) or similar items.

(2) Each of CN and the City shall pay to the other its respective share of Park Development Costs on a monthly basis based upon Progress Certificates provided by the Consulting Landscape Architects. Provided City shall have the right to withhold monthly payments with respect to its share of costs incurred by CN with respect to any Park until such time as such of Parks or the John Street Corridor has been substantially completed as determined by the Commissioner of Parks and Recreation, in which event such payments shall bear interest at Prime Rate, such interest to start to accrue thirty (30) days after the Progress Certificate in respect of the amounts set forth therein and excluding interest on holdbacks and late payment charges between CN and the Contractor. Notwithstanding anything herein contained to the contrary, no interest shall be calculated or accrue or be payable in respect of any of the Park Development Costs until the preliminary title opinions have been given in accordance with Sections 5.11(6), 6.01(5) and 8.03(4). With respect to such payment, such payment obligations shall be subject to the provisions of the Construction Lien Act and Section 3.06 hereof.

(3) In the event of any dispute as to the amount payable at any time, the portion of such amount in dispute need not be paid until the matter has been determined by arbitration in accordance with Article IX hereof, if applicable.

Section 7.06 - Inspection

CN shall permit inspectors employed, engaged or appointed by the City to have access to and carry out inspections with respect to the Park Work as, when and where the Commissioner of Parks and Recreation deems advisable and without the necessity of any prior notice, provided such inspectors shall provide appropriate identification upon request.

Section 7.07 - Progress Certificates

As the work progresses (whether or not cost shared with the City), the Consulting Landscape Architects in respect of such portion of the Park Work will issue to CN and to the City progress certificates ("Progress Certificates") on a monthly basis which shall state:

(a) the percentage of the work which in the opinion of the Consulting Landscape Architects has been satisfactorily completed with respect to each of the Parks or the John Street Corridor since the commencement of Park Work on such Parks or the John Street Corridor and the corresponding dollar value thereof;

(b) the amounts paid to date and the amounts due on each construction contract in respect of Park Work performed on such of the Parks or the John Street Corridor;

(c) the amount of any Holdbacks required under the Construction Lien Act or any other applicable legislation in respect of Park Work being performed on such of the Parks or the John Street Corridor;

(d) the cost* of the Consulting Landscape Architects' services for the period covered by the certificate and a statement of the amount of the cost of the services which is attributable to the matter covered by such certificate;

(e) the portion of the above costs allocated to each of CN and the City; and

(f) the amount payable by the City in respect of such portion of the Park Work performed to date and remaining unpaid.

Section 7.08 Deficiencies in Parks and John Street Corridor Construction

The City shall have the right at any time on or before the later of final assumption (except for the John Street Corridor) of any of the Parks by the City or the expiry of the Warranty Period referred to in Section 7.10 hereof and delivery of the Final Acceptance Certificate in respect of each of the Parks or the John Street Corridor to deliver to CN and to the Consulting Landscape Architects retained in respect of such of the Parks or the John Street Corridor a notice in writing (hereafter referred to as a "Notice to Correct Work") stipulating any deficiency or default in the construction of such of the Parks or the John

Street Corridor (as the case may be) and stipulating the manner in which the deficiency or default may be remedied and the Consulting Landscape Architect shall then certify to the City the precise manner in which the default is to be remedied. Upon receipt of the Notice to Correct Work from the City, CN shall promptly remedy or cause to be remedied the deficiency or default in the manner stipulated in the Notice to Correct Work and as certified by the Consulting Landscape Architect. If the deficiency or default arises from a failure to follow the Approved Park Construction Drawings or from unsound construction practices or from the negligent (whether by act or omission) execution and supervision of the construction contract or from failure to carry out the Work in accordance with this Agreement or from any default of CN (hereinafter also referred to as a "CN Designated Failure"), CN shall be solely responsible for the cost of remedying such deficiency or default and in all other circumstances, such costs shall be shared as otherwise provided herein. CN acknowledges that its responsibility for the construction of the Parks and John Street Corridor pursuant to Section 7.03 shall not be diminished in any way as a result of any Notice to Correct Work.

Section 7.09 - Enforcement of Construction Covenants by the City

(1) If, at any time before any of the Parks are conveyed to the City (and without limiting any rights of the City pursuant to any Warranty Period or at any time before the final

Completion of the John Street Corridor), CN is in breach of this Agreement because it:

(i) has carried out or is carrying out Park Work which is faulty, careless or otherwise not in accordance with this Agreement or the Approved Park Construction Drawings;

(ii) has failed or is failing to repair or do again such Park Work so that it conforms with this Agreement and the Approved Park Construction Drawings;

(iii) has failed in or abandoned the carrying out and completion of the Park Work;

(iv) has carried out or is carrying out the Park Work or John Street Corridor work in such a manner that:

(A) it will not complete on or before the Stadium Opening Date the Park Work and John Street Corridor work required to be completed by the Stadium Opening Date pursuant to Section 5.01(2) hereof; or

(B) it will not complete on or before the occupancy of any building on any Development Site the portion of the Park Work or John Street Corridor work required in the opinion of the Commissioner of Parks and Recreation to service such Development Site;

When determining whether the Work referred to in this Section 7.09(1)(iv) will be completed within such time limits, due regard shall be given to the times shown on the Infrastructure Phasing Schedule "N" together with any other relevant factors; or

(v) is otherwise in default under Articles VI or VII of this Agreement,

the Commissioner of Parks and Recreation may, at his option, deliver to CN written notice setting forth the particulars of such breach and requiring CN to remedy such breach within the reasonable time specified therein.

(2) CN shall forthwith upon receipt of such notice, carry out all steps required and shall remedy the said breach within the reasonable time specified therein.

(3) In the event CN fails to comply promptly with a Notice to Correct Work delivered to it by the City pursuant to Section 7.08 and which CN is obligated to correct or in the event CN fails to comply promptly with any notice delivered to it by the City pursuant to Section 7.09 and which CN is obligated to correct, the City may, in addition to and without prejudice to any other rights which it may have pursuant to this Agreement or otherwise at law, on written notice to CN, enter into and upon the said Parks lands or John Street Corridor and supply such materials, engage such consultants, contractors and workmen, and perform such work, repair and replace any work and take any steps, as are required, in the

sole opinion and discretion of the Commissioner of Parks and Recreation, to carry out and complete the Park Work to the extent determined by the Commissioner of Parks and Recreation. To the extent that the City completes or remedies all or any portion of the Park Work, the Park Work shall be completed or remedied in accordance with the Approved Park Construction Drawings. In the event that there are no Approved Park Construction Drawings for the Park Infrastructure to which the Notice to Correct Work relates, the City shall, if it elects to proceed under this section, prepare all necessary construction drawings having regard for the factors set out in Article VI.

(4) The City shall have the right to recover from CN in respect of such work performed and any steps carried out pursuant to Section 7.09(3) the total cost to the City, as calculated reasonably by the Commissioner of Parks and Recreation, of the work so performed and the steps so carried out. All such cost shall be shared in accordance with the provisions hereof except to the extent the cost of the Park Work is increased as a result of a CN Designated Failure.

CN agrees to pay to the City the said sums forthwith upon receiving written notice itemizing the said total cost to the City as determined in accordance with this Section 7.09(4). CN shall pay interest on any amounts owing to the City hereunder from the date of any payment by the City with interest to be calculated at the Prime Rate. The City may, in addition to exercising any other remedies it may have (including without limitation exercising its right to the Security as provided pursuant to Section 7.12 herein), apply to any amounts owing by CN pursuant to this Section 7.09 any amounts owing by the City to CN pursuant to any other provision under this Agreement.

(5) If the City enters in and upon CN's lands pursuant to Sections 7.06, 7.08 or 7.09 herein, it shall be deemed to do so solely as the agent of CN* and such entry shall not be deemed, for any purpose, to constitute acceptance or assumption of the Park Work or any portion thereof.

(6) In the event that the City enters upon the lands and remedies or completes any Park Work pursuant to subsection (3) above and the amount of the Security then held by the City is not sufficient, in the opinion of the Commissioner of Parks and Recreation to reimburse the City for all amounts owing to the City pursuant to this Agreement, then the City may, in addition to exercising any other remedies it may have, collect CN's share of the total cost of the Park Work performed by the City (as calculated pursuant to Section 7.09(4) herein) pursuant to subsection (1) together with interest at the Prime Rate as taxes with respect to such Parks, with all such amounts to be payable as directed by City Council pursuant to section 325 of the Municipal Act.

Section 7.10 - Construction Warranty

(1) Upon the completion of each of the Parks* to the satisfaction of the Consulting Landscape Architects retained in respect to such portion of the Parks Infrastructure, such Consulting Landscape Architects shall prepare a Completion Certificate (the "Completion Certificate") in respect of that portion of the Parks Infrastructure for which such Consulting Landscape Architects were retained and shall forward such Completion Certificate to CN and the City. The Completion Certificate shall include the following:

(a) the description of the Park Work in respect of which such Completion Certificate is given;

(b) a certificate stating that all of the Park Work has been completed in accordance with the Approved Park Construction Drawings and the provisions of this Agreement;

(c) confirmation that the final payment certificate has been issued with respect to such Park Infrastructure;

(d) a statement as to the date of completion of such portion of the Park Work;

(e) a complete set of drawings for each of the Parks as built together with a complete consolidated set of drawings, where requested;

(f) the certified grading plans contemplated by Section 3.02(1)(j) and (k) with respect to the Park Work;

(g) a statement as to the total cost of the Park Work; and

(h) the Consulting Landscape Architects' assessment of the allocation of the total cost as between CN and the City.

Within thirty (30) days of receipt of the Completion Certificate, the Commissioner of Parks and Recreation shall forward to the Consulting Landscape Architects either: (i) a notice of acceptance (the "Notice of Acceptance") to the Completion Certificate accepting the Completion Certificate, in which case the Completion Certificate shall be deemed to be and is hereafter referred to as the "Approved Completion Certificate"; or (ii) a final list of deficiencies (the "Final List of Deficiencies") respecting the Park work referred to in the Completion Certificate. Upon receipt of the Final List of Deficiencies, CN shall promptly remedy any defects or deficiencies contained therein and upon completion, the Consulting Landscape Architects shall issue a new Completion Certificate. CN shall be solely responsible for the cost of remedying any defect or deficiency arising from a CN Designated Failure and in all other circumstances, the cost shall be shared as otherwise provided herein. Upon completion of the Final List of Deficiencies to the satisfaction of the Commissioner of Parks and Recreation, the Commissioner of Parks and Recreation shall issue a Notice of

Acceptance and the new Completion Certificate shall be deemed to be the Approved Completion Certificate in respect of the Park Work referred to therein.

(2) CN shall correct or cause to be corrected at its own expense and to the satisfaction of the Commissioner of Parks and Recreation any defects or deficiencies in any Park Work appearing within a period (the "Warranty Period") of two (2) years after the Notice of Acceptance for an Approved Completion Certificate has been given in respect of such Park Work, together with any damage to any other Park Infrastructure resulting from any such corrections. Notwithstanding the fact that the Warranty Period may have expired for any Park Infrastructure, the City shall not be required to assume such Park Infrastructure if it is not in good (but used) condition at the date of assumption. Neither the delivery of the Approved Completion Certificate nor payment thereunder nor conveyance to the City of a Park Lease therefor shall relieve CN from this responsibility. Without in any manner reducing CN's obligations hereunder, the City shall give to CN prompt written notice of any observed defects. Without in any manner reducing CN's obligations hereunder, the City shall have the option, on request of CN, to be exercised in the sole opinion and discretion of the Commissioner of Parks and Recreation, of accepting any warranty (and the Security relating thereto) for any Park Infrastructure from the contractor of such Park

Infrastructure, provided that such acceptance shall not be deemed to release CN of its warranty obligations herein.

(3) Not later than fifteen (15) days prior to expiry of the Warranty Period for each of the Parks or the John Street Corridor, CN shall arrange with the Commissioner of Parks and Recreation for a final inspection of such of the Parks and John Street Corridor as may be appropriate in the circumstances and shall deliver a final acceptance certificate (the "Final Acceptance Certificate") from the Consulting Landscape Architects retained in respect of such portion of the Park Infrastructure in a form satisfactory to the Commissioner of Parks and Recreation confirming in the opinion of such Consulting Landscape Architects that there are no defects or deficiencies in the Park Infrastructure referred to therein and upon receipt of such a certificate and provided that the Commissioner of Parks and Recreation is satisfied that there are no outstanding defects or deficiencies, the Commissioner of Parks and Recreation shall so advise CN in writing and the warranty shall expire for such Park Infrastructure. Upon such expiry, the balance of the Security then held by the City and relating to such portion of the Park Infrastructure shall be returned to CN or to the contractor, if applicable, within thirty (30) days of the expiry of the Warranty Period for such Park Infrastructure, provided that there are no outstanding claims against the Security, no liens have been registered against

such Park Infrastructure and all lien periods have expired under the Construction Lien Act.

(4) In the event that the City assumes any of the Parks prior to the expiry of the Warranty Period, the warranty shall continue to apply for the balance of the Warranty Period.

(5) Upon an Approved Completion Certificate being obtained for any of the Parks, the Commissioner of Parks and Recreation shall report to the City Neighbourhoods Committee with a recommendation that such Parks be assumed by the City as soon as possible. CN and the City acknowledge their respective intentions that each of the Parks be assumed as soon as possible following its completion. CN shall not be obliged to allow any of the Parks to be used by the public until assumption of such Parks by the City, but if the matters required pursuant to Section 5.01(2) are not available to the public by the Stadium Opening Date, the City shall be entitled to exercise its rights pursuant to Section 5.01(3). CN shall convey any of the Parks prior to the assumption by the City.

Section 7.11 - Insurance

(1) CN shall be required to take out and keep in force or cause to be taken out and kept in force in respect of the Park Infrastructure, only until each of the Parks and the NLP Retaining Wall has been conveyed to the City, comprehensive

general liability insurance, in a policy having a form and with limits reasonably satisfactory to the City Treasurer, against claims for personal injury, death or property damage resulting from any accident or occurrence arising from the carrying out of the obligations of CN hereunder. Such insurance shall be in an amount not less than $5,000,000.00 per occurrence and for the first five years after the Commencement Date not more than $10,000,000.00 per occurrence and thereafter no more than such reasonable amount as may be applicable for park construction contracts for work of a similar nature in the City of Toronto.

(2) The said general liability insurance policy shall name the City as an insured party and shall contain a cross-liability clause protecting the City against claims by CN as if the City were separately insured and protecting CN against claims by the City as if CN were separately insured, a waiver by the insurer of its rights of subrogation against the insured parties and a clause providing that the insurer will not cancel nor refuse to renew the said insurance without first giving the City thirty (30) days' prior written notice thereof.

(3) CN shall, before commencing any Park Work pursuant to this Agreement, deliver to the City a certificate from the insurer verifying that CN has obtained the said insurance policy and unless such coverage is included in the CN blanket insurance

policy covering the matters referred to in this Section 7.11 and other properties of CN, CN shall deliver a copy of the said policy to the City.

(4) If at any time the City receives notice from the insurer that it has cancelled or refused to renew the said insurance, or that it intends to do so, or if the City otherwise determines to its sole satisfaction that the said insurance has lapsed, been cancelled or is about to lapse or be cancelled without renewal or replacement, the City may, on written notice to CN and notwithstanding Section 11.01, as agent for and to the extent such insurance cost exceeds what would have otherwise been payable as a shared cost, at the sole cost and expense of CN, obtain insurance in accordance with this section. In such circumstances, the City shall be entitled either to obtain new insurance or add the necessary insurance coverage to the City's blanket insurance. CN shall forthwith upon receipt of written notice thereof from the City reimburse the City for the cost of the said insurance. Such insurance shall be cancelled by the City upon receipt of both a certificate of insurance by CN as hereinabove required together with payment of any cost incurred by the City.

(5) CN agrees to maintain or cause to be maintained from time to time prior to the delivery by the Consulting Landscape Architects of the Approved Completion Certificate in respect of any of the Park Infrastructure, insurance in respect of

each of such Park Infrastructure constructed or installed by or on behalf of CN pursuant to this Agreement which is normally insured by prudent owners from time to time to 100% of their Replacement Value against loss or damage by perils of "all risks" (being the perils from time to time included in the standard form of "all risks" policy issued by insurers from time to time) to the extent available and generally obtained from time to time by owners of park development properties in the City. Such policies shall in addition insure both the City and CN during phases of demolition and construction as their interest may appear.

(6) Any insurance policy required under this section may be carried under blanket policies provided, however, that such policies and the amount thereof allocable to this project shall comply with all other requirements of this section.

(7) CN shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining any such insurance required to be obtained by or pursuant to this section. CN will produce to the City evidence of payment of premiums and other sums of money payable for maintaining such insurance not later than the due date thereof. All such premiums and other sums of money shall be included as costs of the Parks to be allocated between CN and the City in proportion to their respective shares of the cost of the Park Infrastructure to which such insurance relates,

or if such proportion cannot be calculated in the proportion of 75% to CN and 25% to the City, provided that such costs have been allocated in the policy specifically to the Park Work.

Section 7.12 - Performance Bond

(1) In order to satisfy the City that sufficient funds are at all times available to pay CN's portion of the cost of the Park Infrastructure, CN shall, after the Commencement Date and prior to commencement of the excavation and construction of the Park Infrastructure, deliver to the City a performance bond or performance bonds (hereinafter referred to as the "Park Security") issued by a recognized bonding company actively carrying on business in Ontario and approved by the City Treasurer and in a form satisfactory to the City Solicitor and ensuring full performance of the obligations of CN in respect of the Park Infrastructure except for the cost of the Southern Linear Park. The Park Security relating to the portion of the Southern Linear Park adjacent to or across a road abutting the Southern Linear Park from any Development Site for which a development agreement has been executed with the City shall be delivered to the City (i) in the case where the Hi-Line Railway is permanently removed, at the time the Development Review Process for the proposed development of the adjacent Development Site is completed with an executed agreement, and (ii) in the case where the Hi-Line Railway has

not been permanently removed, within 30 days of the permanent removal of the High Line. The form of the bond shall reflect the timing requirements of completing the respective Parks as referred to in Section 5.01(2) hereof and the City's right to perform emergency work as referred to in this Article VII. The bond shall require the bonding company to reply to any notice or request from the City within five (5) days of receipt confirming whether or not the bonding company will be completing the Park Infrastructure on a timely basis as required herein. If the bonding company either fails to respond within the time limit or fails to commence and complete the Park Work to be covered by such Security, within the time set forth in Section 5.01(2) hereof, the City shall be entitled to draw upon the bond to the extent necessary to complete the Park Work. The amount of the Park Security shall be equal to 100% of CN's share of the cost of the Park Work (subject to the maximum upset amounts contained in Section 7.02(3)), provided that the amount of the Park Security shall be amended from time to time as approved by the Commissioner of Parks and Recreation to reflect any approved updated estimates or actual contract prices. The City agrees that separate bonds may be provided in respect of one or more of the Park Infrastructure so long as the aggregate amount of the Security is not less than CN's share of the cost of the Park Infrastructure. The City shall have the option, on CN's request, to be exercised in the sole opinion and discretion of the Commissioner of Parks and Recreation, of accepting any performance bond (in the form required herein) for any Park Infrastructure from the contractor of such Park Infrastructure in substitution for the bond from CN, provided that such acceptance shall not be deemed to release CN of its obligations in this Agreement.

(2) The Park Security shall remain in effect for the full duration of this Agreement, subject to the provisions of this Section 7.12. If CN's share of the estimated cost of the Park Work or any part thereof, exceeds the amount of the Park Security held by the City, CN, within thirty (30) days of receipt of written notice from the City, shall increase the Park Security held by the City to cover the deficiency. In the event that this additional Park Security is not provided within thirty (30) days, it shall be considered a default by CN and the City may, in addition to exercising any other remedies it may have, refuse during the period of such default to process any other building permits within the Stadium Precinct other than for the Stadium, provided nothing in this Section 7.12(2) shall allow the City to revoke any previously issued building permits.

(3) CN shall have the right from time to time (but on no more than a quarterly basis for each of the Park Infrastructure) and on prior written notice to the Commissioner of Parks and Recreation to reduce or replace the Security relating to any

Park Infrastructure with such reduction or replacement security to be based on the Progress Certificates relating to such Park Infrastructure to the date of such application so long as the Security covers at all times the cost to complete the Park Infrastructure.

(4) The Park Security shall also incorporate in it the maintenance and the construction warranty referred to in Section 7.12 herein in an amount equal to fifteen per cent (15%) of the actual costs of the Park Infrastructure covered by such security until the later of the receipt of the Final Acceptance Certificate, assumption of the Park Infrastructure by the City * and expiry of the Warranty Period.

Section 7.13 - Park Infrastructure Cost

CN and the City shall share the cost of Park Infrastructure in accordance with the provisions hereof. The costs of the Park Infrastructure shall, subject to the provisions hereof and the maximum upset amounts contained in Section 7.02(3), be computed by multiplying the actual cost of the Park Infrastructure by the appropriate party's contribution factor set out opposite each such Park Infrastructure on Schedule "T" hereto.

Section 7.14 - Inspection of Records

CN shall direct each of the Consulting Landscape Architects to allow any duly authorized representative of the City to inspect the books and records upon which he has relied in the preparation of any Progress Certificate or Completion Certificate forthwith upon receipt of a written request from the City representative to the Consulting Landscape Architects and CN shall make its books and records available to the extent necessary to verify the matters set forth in any Progress Certificate Completion Certificate or Final Completion Certificate.

Section 7.15 - Adjustments

Following receipt of the Final Completion Certificate, CN or the City, as the case may be, shall, from time to time within thirty (30) days after written demand, pay to the other any adjustments which are necessary to ensure that the total portion of the payments made by the City and CN are in accordance with Schedule "T" hereto and the provisions of this Agreement.

Section 7.16 - Maintenance

CN shall at its expense maintain and repair the John Street Corridor and all hard surfaced areas in Tower Park West and the interim hard surface in Tower Park East forming part of any interim Pedestrian Walkway except for landscaped or horticultural areas and except for park buildings required by the City in the development of the Park in Tower Park West and Tower Park East which shall be maintained by the City. The City shall at all times after assumption maintain the remaining portions of Tower Park West and Tower Park East to the usual City standards as they may vary from time to time for equivalent City parks, with such obligation to be included in the Park Lease for such Parks.

ARTICLE VIII

CITY HOUSING LANDS

Section 8.01 - Conveyance of Housing Lands

(1) Subject to the provisions hereof, CN agrees to convey to the City the City Housing Lands comprising eleven (11) acres of land to be used for housing primarily for low to moderate income households together with permitted ancillary non-residential development. The calculation of the area of lands to be conveyed shall include the area of Local Streets, but shall not include any portion of Esplanade, Portland Street or Primary Streets. The development rights attributable to Local Streets shall be available to the owners of abutting lands, shall be reserved in favour of such adjoining owners in a manner acceptable to both parties, and shall be divided equally where lands abut a street on both sides. All conveyances of the City Housing Lands shall expressly restrict the use of such land for housing* plus a maximum gross floor area of 200,000 square feet in aggregate for all of the City Housing Lands for ancillary non residential development, all as permitted by by-law for a period of fifty (50) years from the Commencement Date and shall contain no other restrictions whatsoever. The residual

amount of non-residential development attributable to the City Housing Lands shall be reserved in favour of CN in a manner acceptable to both parties, but with the transferability of such reserved density to be subject to any necessary Official Plan and rezoning amendments, which amendments will be considered on their merits at the time of an application by CN. The City confirms its intention to amend Appendix D to By-law 612-85 and Map B to By-law 610-85 and all other appendices and maps to the said by-laws to delete as one of the Primary Streets that portion of the unnamed north-south street between Portland Street and Bathurst Street north of Esplanade and south of the Rail Corridor. In the event that the City fails to pass such amending by-law or in the event such amending by-law is not finally approved by the OMB, the City agrees that it shall include the area of such portion of the unnamed street referred to herein which is adjacent to the City Housing Lands in the calculation of the area of the City Housing Lands. The City also confirms its intention to amend Map B to By-law 610-85 and all other maps to the said by-law to show as one of the Primary Streets all of the Housey Street extension to Esplanade. CN agrees to support all such by-law amendments referred to in this Section 8.01(1). All conveyances of Local Streets shall expressly provide in a manner acceptable to both parties the intention of the parties hereby expressed that all development rights accruing to the Local Street shall be for the benefit of the owners of the abutting lands.

(2) Save for the Phase I Housing Lands, the location of the boundaries and the exact area of the City Housing Lands, which are to reflect the checkerboard development as proposed by the Commissioner of Housing, shall be subject to adjustment by mutual agreement between CN and the Commissioner of Housing as part of the planning of the Precincts containing the City Housing Lands, provided that CN and the City shall each be satisfied that it has developable parcels remaining and provided that in no case shall the area of the City Housing Lands exceed 11 acres or be less than 10.5 acres. In the event the boundaries cannot be agreed, the determination of such boundaries may be submitted by the City or CN to arbitration in accordance with Article IX hereof.

(3) CN shall execute and place in escrow registrable conveyances of the Phase I Housing Lands with the City Solicitor not later than five (5) days prior to the Order Date, such conveyances to be released and delivered once the conveyances are required to be completed in accordance with the provisions hereof.

(4) In order to protect the City's interest in the City Housing Lands, the City shall be entitled to register a notice of its interest in the Phase I Housing Lands and in a 6.02-acre

parcel east of Portland Street and south of Esplanade shown designated as Part 28 on Schedule "S-2" hereto against title to such lands, and CN will for such purpose execute and deliver prior to the Order Date a covenant in favour of the City to convey the lands once the conditions precedent to such conveyances set forth in Sections 8.02 and 8.03 have been satisfied. As soon as the boundaries of the City Housing Lands east of Portland Street have been determined and reference plans recorded describing such boundaries, the City shall be entitled to register a notice of its interest in such lands against title to such lands and the City shall upon such registration deliver to CN a release of the City's interest in the said 6.02-acre parcel.

Section 8.02 - Initial Conveyance

Immediately upon the Hi-Line Railway being removed permanently from the City Housing Lands and all grading being completed by CN in respect of the City Housing Lands as herein required, CN shall convey to the City subject to the Permitted Encumbrances the fee simple interest in the Phase I Housing Lands. In the event that the Hi-Line Railway is not removed within five (5) years from the Commencement Date, the City may at any time thereafter and at its option upon sixty (60) days' prior written notice to CN require that the City Housing Lands be conveyed to the City in fee simple. If the Hi-Line Railway is still required by CN to be available for use by CN, the City shall at the time of conveyance of the City

Housing Lands to the City grant to CN a lease of that portion of the City Housing Lands occupied by the Hi-Line Railway on a fully "net to landlord" basis and without payment of any rent or other fees or amounts other than expenses attributable to the use and existence of the Hi-Line Railway for a term of ten (10) years with perpetual renewals, but ending on the happening of the first to occur of the two events recited in sub-paragraphs (i) and (ii) of Section 6.03(3). At the request of CN, City will agree to a reservation of a right on the same terms, instead of the said leaseback. Such leaseback or reservation, as the case may be, shall permit the exclusive use, operation and maintenance of the Hi-Line Railway by CN and rights of access over the City Housing Lands for such purposes and shall be without prejudice to CN's continuing obligations to remove the Hi-Line Railway as herein provided.

Section 8.03 - Subsequent Housing Conveyances

(1) Following conveyance of the Phase 1 Housing Lands, the City shall be entitled to receive from CN a conveyance in fee simple subject to the Permitted Encumbrances of the balance of the City Housing Lands upon the City commencing actual construction of the housing projects proposed for the portion of the City Housing Lands which have at that time been conveyed to the City.

(2) Subject to earlier conveyance pursuant to this Section and without there being any obligation on the City to have

commenced construction on the Phase I Housing Lands, CN shall convey the balance of the City Housing Lands to the City subject to any reservation for the Hi-Line Railway as described in Section 8.02 if the Hi-Line Railway has not then been removed according to the following schedule:

Upon the Coming into force of the By-law to remove the "H" Zoning Designation for	Portion of City Housing Lands (other than Phase I Housing Lands) to be conveyed
All CN Precincts East of Spadina Avenue	50%
First CN Precinct West of Spadina Avenue	50%

After approval of a precinct plan for the City Housing Lands subsequent conveyances to the City shall consist of whole parts on a reference plan from such approved precinct plan whether or not such parts are of equal size.

(3) CN covenants and represents to the City that at the time of delivery of each of the conveyances given pursuant to this Article VIII, it will have good title to the City Housing Lands free and clear of encumbrance, subject only to the Permitted Encumbrances. In the event that the Commissioner

of Public Works requires that any services existing prior to the construction of infrastructure on such lands be disconnected or relocated in order to enable the development of the City Housing Lands, CN shall, at its expense and forthwith upon request, either disconnect such services in a manner satisfactory to the Commissioner of Public Works or relocate such services.

(4) CN shall obtain at its expense and deliver as soon as possible a preliminary title opinion from its solicitors, Messrs. Blake, Cassels & Graydon, addressed to the City in the usual form wherein such solicitors opine to the City that as of the date of such opinion (having searched appropriate public registers and publicly available information and such other searches as would a purchaser's solicitor in respect of similar lands purchased from CN)^* upon registration of the freehold conveyances provided for in this Agreement, City will in each case acquire fee title to the lands being conveyed good and free from encumbrances, save for the Permitted Encumbrances and such other matters which are outstanding together with a CN covenant to remove such matters by the time of conveyance. CN shall obtain at its expense and deliver at the time of conveyance to the City a final title opinion from its solicitors, Messrs. Blake, Cassels & Graydon, addressed to the City in the usual form wherein such solicitors opine to the City that as of the date of such opinion (having searched appropriate public registers

and publicly available information and such other searches as would a purchaser's solicitor in respect of similar lands purchased from CN)* upon registration of the freehold conveyances provided for in this Agreement, City will in each case acquire fee title to the lands being conveyed good and free from encumbrances, save for the Permitted Encumbrances.

Section 8.04 - Conveyance to Other Agencies

All references in this Article to the transfer of land to the City for housing purposes shall be deemed to include and permit the City to direct that title may go to another housing agency or authority designated by the City to receive those lands in lieu of the City (the "City Housing Authority") with such conveyance to be subject to the provisions hereof.

Section 8.05 - Housing Precinct Plans

(1) CN and the City in its capacity as developer of the City Housing Lands (or at the option of the City, the City Housing Authority) shall cooperate with each other and in good faith to prepare jointly a Precinct Plan and a Precinct Agreement for the Precincts in which the City Housing Lands are located with such Precinct Plans to be submitted to the City Council within twelve (12) months after the Commencement Date. Nothing herein shall be deemed to be a derogation of the City's legislative authority, which the parties acknowledge the City shall be entitled to exercise in the normal manner.

CN and the City shall jointly agree to retain any consultants that are required for the preparation of each Precinct Plan and failing such agreement, either party may refer the selection of the consultant to arbitration pursuant to Article IX hereof. Any such consultant shall be retained jointly by both CN and the City and shall report jointly to CN and the City. The cost of preparation of each Precinct Plan shall be equally shared between CN and the City. If a Precinct Plan is not agreed within the aforesaid twelve (12) month period for the purpose of submitting such Precinct Plan to City Council, either party on written notice to the other party may proceed to apply for a Precinct Plan on its own, without limiting the rights of the other party to make submissions in the course of such proceedings. CN agrees that no further Precincts shall be submitted by CN for processing by the City until each Precinct Plan for the Precincts in which the City Housing Lands are located have been submitted by either CN or the City for processing by the City. Upon approval of any such Precinct Plan, CN shall enter into a precinct agreement in a form satisfactory to CN and the City with the City incorporating the provisions of the Precinct Plan, the Memorandum of Conditions and such other matters as may be necessary to reflect the intent thereof, including without limitation the cost-sharing principles set forth in Schedule "T".

(2) CN agrees to give all necessary consents as owner of the City Housing Lands to permit the City to plan for development on the City Housing Lands prior to the date scheduled hereunder for the conveyance of such lands to the City, without limiting the rights of CN as owner of adjacent lands to make submissions in respect of such proposed development.

Section 8.06 - Costs of Infrastructure

(1) The developer of each block of land within the City Housing Lands (whether it be the City or a City Housing Authority) will be responsible for (i) the portion of the cost (designated as the "CN Contribution" on Schedule "T" hereto) of construction of Local Streets designated as Item No. 10 on Schedule "T" hereto (and the services and utilities contained therein) to the extent such streets abut the City Housing Lands, it being understood that only fifty per cent (50%) of such portion of the cost shall be payable when such streets abut the City Housing Lands and the lands of CN or another developer and (ii) fifty per cent (50%) of CN's share of that portion of Portland Street that abuts the City Housing Lands (excluding the cost of the Portland Street Bridge).

(2) If either CN or the City wishes to develop within any Precinct in which a portion of the City Housing Lands is located, in advance of the other party, either as a major site exception as permitted by Section 11.17 of the Part II Plan or as part of an approved Precinct Plan, such developing

party may do so at its own expense, provided that the cost of the streets, services and other Infrastructure to which the other party is required to contribute in accordance with the provisions hereof shall be reimbursed by such other party (with interest at the Prime Rate from the date upon which the developing party was required to pay such cost until the date of reimbursement) in full at the time such other party first obtains a building permit to commence construction within such Precinct. Notwithstanding the foregoing, CN agrees that it shall place the necessary fill on the streets within the housing precincts within ten (10) months after the City has given notice to CN that the City intends to proceed with development pursuant to the provisions of this Section 8.06(2). CN acknowledges that if the City is proceeding to develop a portion of the City Housing Lands in advance of CN, CN shall give to the City such conveyances, consents or other approvals as may be reasonably required by the City to make the streets, services and other Infrastructure available for such development and open to the public.

(3) For greater certainty, and without limiting the generality of anything herein contained, CN and the City agree that CN shall raise the streets required to service the Precincts in which the City Housing Lands are located by the placement of engineered fill that is compacted, graded and otherwise suitable for the final roadbed to the satisfaction of the Commissioner of Public Works. The City acknowledges that CN

shall have access over the City Housing Lands for the purpose of placing such fill and * that sloped embankments to secure such fill may encroach onto the City Housing Lands as may be required to secure the stability of the fill until the City develops the City Housing Lands, subject to the approval of the Commissioner of Public Works to such embankment. CN shall not be required to remove such fill although the City may do so during the development of the City Housing Lands.

ARTICLE IX

ARBITRATION

Section 9.01 - Reference to Arbitration

(1) Either party may submit to arbitration any matter which is expressly permitted hereunder to be submitted to arbitration, all in accordance with the following provisions of this Article. If otherwise required by law, the arbitration shall be carried out pursuant to the Municipal Arbitrations Act, R.S.O. 1980, c.304.

(2) Any such matter shall be submitted to arbitration by written notice to the other party setting forth particulars of the matter to be so submitted and the name and address of an arbitrator to be appointed by the party making such submission.

(3) Upon the giving of such notice, the City and CN shall use their best efforts to agree upon a single arbitrator qualified to determine the matter submitted to arbitration. If the parties cannot agree upon such single arbitrator within ten (10) Business Days after receipt by the other party of the notice submitting the matter to arbitration, the other party hereto shall within ten (10) Business Days thereafter appoint a second arbitrator, and failing such appointment within such time the matter shall be arbitrated by the first arbitrator so appointed in accordance with Section 9.01(2).

(4) None of the provisions of the schedule referred to in Section 5 of the Arbitrations Act shall apply or be deemed to be implied in any submission to arbitration pursuant to this Agreement.

Section 9.02 - Arbitration Procedure

(1) The following provisions shall apply to any arbitration pursuant to this Article:

(a) if two arbitrators are appointed as aforesaid, the two arbitrators shall appoint a third arbitrator within seven (7) Business Days after the appointment of the second arbitrator, if any, and such third arbitrator shall be a member of the arbitration panel for all purposes hereof;

(b) if the two arbitrators refuse or are unable to reach agreement on an acceptable third arbitrator, either arbitrator or either party hereto may apply to a judge of the Supreme Court of Ontario for selection of the third arbitrator who shall be independent of both parties hereto and qualified to determine the matter submitted to arbitration;

(c) if an arbitrator refuses to act, or is incapable of acting, or dies, or withdraws his services, the party or parties or the arbitrators by whom he was appointed may appoint an arbitrator, as the case may be, in his stead, and this power may be exercised from time to time as vacancies occur;

(d) the arbitrators shall make their award in writing within ten (10) Business Days after entering on the reference, or after having been called to act by notice in writing from any party to the submission, or on or before any later date to which the arbitrators, by any writing signed by them, may enlarge the time required by them for making the award, provided that the arbitrators shall not extend the time for making their award by more than twenty (20) Business Days after the expiry of the initial ten (10) day period referred to in this clause (d);

(e) If the arbitrators:

(i) have allowed the initial period of ten (10) Business Days to expire without making an award or without extending the time pursuant to clause (d) above, or;

(ii) if the arbitrators, having extended the time for making their award pursuant to clause (d) above, have failed to deliver their award within the time limited by their extension; or

(iii) if the arbitrators have purported to extend the time for making their award beyond the times limited by clause (d),

then they shall be deemed to have failed to agree and either party hereto shall be entitled by written notice to the other party and to the arbitrators to terminate the reference and resubmit the matter to arbitration in accordance with the provisions of this Article or submit the matter to a court of competent jurisdiction.

(2) The parties to the reference and all parties claiming through them respectively shall, subject to any legal objection, submit to be examined by the arbitrators, on oath in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators all books, deeds, papers, accounts, writings, documents and things within their possession or power respectively that may be required or called for, and do all things during the proceedings on the

reference that the arbitrators require (provided that nothing herein shall be deemed to fetter the discretion of City Council), subject only to documents to which a privilege arising between a solicitor and his client attaches. The parties to the reference and all parties claiming through them respectively shall submit to examination for discovery, produce all relevant documents prior to the hearing of the reference and shall produce all relevant documents at the hearing and submit to be examined at the hearing, subject to the law respecting privilege.

(3) Any witnesses on the reference shall be examined on oath.

(4) The award is to be made by the arbitrators or by a majority of them and is final and binding on all the parties and the persons claiming under them respectively.

(5) The costs of the reference are in the discretion of the arbitrators, who may direct to and by whom and in what manner those costs or any part thereof shall be paid and any costs so directed to be paid shall not be subject to recovery or partial recovery by either party from the other pursuant to any provision of this Agreement.

ARTICLE X

HERITAGE AND PUBLIC ART

Section 10.01 - Heritage

(1) CN acknowledges the following policies of the City and agrees to cooperate with the City to follow them in the Stadium Precinct in the manner set forth in Section 10.01(1)(d) and in accordance with the following provisions of this Section:

(a) The policy of the City to incorporate aspects of the history of the Railway Lands into the Parks and open spaces of the lands by restoring and integrating where feasible significant railway heritage features including the CP Roundhouse, with rail access through Tower Park East to the main line tracks, the adjacent coal/sander loader, and water tower, the John Street signal tower and Cabin D.

(b) The City's recognition of the historical significance of the John Street Pumping Station, which, including the structure and machinery, will be fully recorded by written commentary, photographs and plans and drawings prior to its closure.

(c) The policy of the City that archaeological resources within the Railway Lands shall be investigated, documented, if feasible, and conserved in accordance with the archaeological strategy document (the "Archaeological Strategy Document") attached hereto as Schedule "W" and CN agrees to comply with the provisions of the

Archaeological Strategy Document with respect to the Stadium Precinct in the manner set forth in Section 10.01(1)(d) below and without further obligation in the Stadium Precinct.

(d) CN confirms that, with respect to the Stadium Precinct, it has agreed to perform the following:

1. Documentation

(i) To the extent determined by the Toronto Historical Board, CN shall document, at its cost, by photographic means interior and exterior views of all buildings and structures within the Stadium Precinct which must be demolished. The City shall not require any duplication of photo documentation made available to the City by third parties. Two copies of the photo documentation shall be prepared and kept available for the City to review as the work proceeds.

Upon completion of all demolition and as soon as is reasonably possible, but prior to the Stadium Opening Date, CN shall turn over to the City two complete copies of the photo documentation complete with a full set of negatives suitable for photographic reproductions.

(ii) CN shall advise the City of the name of the photographer who shall have sufficient experience to perform the tasks given to him herein and who is charged with the responsibility for keeping the photographic record. CN shall direct such photographer to cooperate fully and reasonably with the City and the Toronto Historical Board to ensure that all items of City and Toronto Historical Board interest are reasonably recorded.

(iii) CN shall also permit each of the City, Metro or the Province or other agency as authorized by the City in writing to enter on to the site, forthwith upon notice to CN or the Consulting Engineer to photograph and record facilities of archaeological interest. CN shall cooperate fully in providing said access.

(iv) If during any excavation, the contractor or the Consulting Engineer discovers anything that appears to be of archaeological interest or significance, CN shall immediately notify the City and the Toronto Historical Board who shall have 24 hours following notification to examine at their risk such archaeological items in the location in which such items were discovered. Upon expiry of the said 24 hours, CN shall comply with the provisions of subsections 3(iii) hereof.

2. Artifacts

CN shall carefully salvage and turn over to the City at no cost to the City all items on the list of artifacts described in Appendix B1 of Schedule W hereto. CN shall assist the City in securing rights to store at no cost to the City the items referred to in Appendix B1 of Schedule "W" in the C.P. Roundhouse or such other location within the Railway Lands as determined by the City and CN shall deliver the artifacts to such location at no cost to the City.

3. Archaeology

(i) CN shall contribute $25,000 to the City upon the Commencement Date to permit the City or its designated agent to conduct archaeological investigations within the Stadium Precinct. It is understood by the parties that the City is to apply for funding to supplement the $25,000 contribution being made by CN and that the City shall not require the said contribution from CN until they have secured or formally allocatd an additional $75,000 of funding for the express purpose of sponsoring the archaeological investigation of the Stadium Precinct. In the event the City cannot raise $75,000, CN shall contribute a lesser amount, equal to 25% of the total raised or allocated by the City.

(ii) The City shall in pursuing its archaeological objectives not obstruct or cause delay to the construction of any building including the Stadium or any Infrastructure Element within the Stadium Precinct. CN shall permit the City or its agents to pursue reasonably their archaeological objectives and to facilitate to the best of CN's ability the pursuit of same.

(iii) CN shall set aside an area for the archaeologists in the employ of the Toronto Historical Board to sift through excavated materials from the areas of particular archaeological interest.

(2) The City acknowledges that pursuit of the above heritage provisions shall not unduly restrict the execution of the CN development rights provided for under the Stadium Precinct By-law or unduly impede ongoing construction projects. At least three months prior to commencing development of the Stadium Precinct except for the Stadium Development Site, CN shall notify the City of its intention to commence Work within the Stadium Precinct. The City shall have a three month period from this date in which to accomplish its requirements under Subsection 10.01(1) hereof unless CN's commencement is delayed, in which event the City shall have an additional period of time equal to such delay. After expiry of this three month period plus any extension

resulting from CN's delay, the City shall be permitted on site to pursue these objectives only with the permission of CN. For the Stadium Development Site, CN shall provide such time to the City as may be reasonably available having regard to the proposed construction schedule for the relocation of the John Street Pumping Station and for the construction of the Stadium.

Section 10.02 - Public Art

CN shall comply within the Stadium Precinct with the requirements of the City set forth in its art guidelines entitled "1% for Art Guidelines" and attached hereto as Schedule "X". CN shall be entitled to determine for each Development Site which of the four options that it wishes to follow for such Development Site.

ARTICLE XI

GENERAL

Section 11.01 - Force Majeure

Whenever and to the extent that any party hereto shall be unable to perform or shall be delayed or restricted in the performance of any obligations (other than an obligation to pay money) arising under this Agreement or any other agreement entered into by the parties pursuant hereto by reason of any cause resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, riots, crime, disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortages of suitable parts, materials, labour or transportation, or anything beyond the control of any party whether or not of a like or similar nature, the party having the obligation shall be relieved from the performance thereof for so long as such cause exists, and the other parties hereto shall not be entitled to any compensation for any loss, damages, inconvenience, nuisance or discomfort thereby occasioned. Notwithstanding the provisions of this Section 11.01, CN acknowledges that if any item referred to in Section 5.01(2) is not completed and operational by the Stadium Opening Date as a result of any matter referred to in this Section 11.01, the provisions of Section 5.01(3) shall apply and pursuant to such Section 5.01(3), CN shall not apply for further building permits within the Stadium Precinct until the requirements of Section 5.01(2) have been complied with.

Section 11.02 - Jurisdiction

CN acknowledges that, notwithstanding by reason of it being a railway company or for any other reason, it may not be subject to the jurisdiction of the City under the Planning Act or the City of Toronto Act, 1971, as amended, CN will be bound, with respect to all matters concerning the Railway Lands, by all proper and lawful exercises of the City's authority in planning matters, pursuant to the Planning Act or the City of Toronto Act, 1971, as amended.

Nevertheless, CN and the City enter into this Agreement to facilitate the development of the Railway Lands and acknowledge that such should not be interpreted as recognition that the City has any planning or development jurisdiction over CN in connection with the development of the Railway Lands, nor that the City does not have any such jurisdiction.

Section 11.03 - Notices

A notice, demand, request, payment, consent or objection required or contemplated to be given or made hereunder shall be in writing and either delivered personally or sent by telegram, telegraph, telex, telecopy or other means of electronic telecommunication or by registered mail postage prepaid addressed as follows:

(a) in the case of CN:

CN Real Estate
Suite2222
145 King Street West
Toronto, Ontario
M5H 1J8

(Attention: Vice-President, Development)

(b) in the case of the City:

City of Toronto

2nd Floor, East Tower

City Hall

Toronto, Ontario

M5H 2N1

(Attention: City Clerk)

or such other address of which either party may from time to time notify the other in writing. As a courtesy and without detracting from the effectiveness of any notice given as aforesaid, CN shall send copies of any such notices to the Commissioner of Public Works, the Commissioner of Parks and Recreation and the Commissioner of Planning and Development at the above address. The time of giving or making such notice, demand, request, consent or objection shall be (i) if delivered or sent by means of electronic telecommunication, when so delivered or sent, (ii) if mailed in Canada, other than during an actual or threatened postal disruption, on the second Business Day following the date of mailing, and (iii) otherwise, when received. The City agrees that as a courtesy only and without incurring any liability whatsoever, it shall endeavour to send by ordinary mail a copy of any notice of default issued pursuant to Section 3.10 or Section 7.09 to The Stadium Corporation, at Suite 930, 277 Front Street West, Toronto, Ontario M5V 2X4 or such other address as the Stadium Corporation may advise by notice in writing. For clarity, the parties confirm that the giving of a copy of such notice shall not delay or restrict the City in any way whatsoever in exercising any remedies to which it is entitled pursuant to the terms of this Agreement.

Section 11.04 - Registration and Discharge

(1) Upon the Commencement Date, this Agreement may be registered by the City or CN on title to the Stadium Precinct and such other lands as referred to in Section 5.11(7)(ii). No registrations of this Agreement or of any legal, equitable or contingent interests arising out of it shall be effected until the Commencement Date.

(2) In the event of development of any Development Site within any Precinct and provided CN is not otherwise in default of any provision of this Agreement relating to such Development Site or of any other provision that is of a major nature that materially affects the development or use of the Stadium Precinct, the City shall release the owner of such Development Site from any obligations of CN hereunder to the extent that such obligations have been completed with respect to such Development Site and shall on request consent to a discharge against such Development Site to the extent any obligations do not directly affect such Development Site.

(3) So long as CN is not in default under the terms of this Agreement relating to a Development Site or of any other provision that is of a major nature that materially affects the development or use of the Stadium Precinct, the City will

consent to the discharge of this Agreement from such Development Site if a development agreement made with the City pursuant to Section 40 of the Planning Act has been registered against such Development Site to the extent of the obligations hereunder relating to such parcel having been satisfied or incorporated in such development agreement, provided that any acknowledgment of satisfaction of any obligation may only be given pursuant to Section 11.04(4) hereof.

(4) Upon the satisfaction of all or any part of the obligations under this Agreement, the City will provide upon the request of CN an acknowledgment to CN, or such other interested party as CN may direct, that this Agreement has been totally or partially discharged by performance, as the case may be and to the best of the City's knowledge and belief as to the status of any remaining work or defaults hereunder. The City shall provide such written acknowledgment within a reasonable period of time, from time to time, at CN's reasonable request.

(5) The obligations of CN under this Agreement may be assigned to any successor in interest of the Stadium Precinct or any part thereof, and, provided the City has consented in writing to such assignment and to the release of CN, CN shall be released from all obligations hereunder with respect to such lands or their development. CN acknowledges that the City

shall be under no obligation to consent to any such assignment or release. At any time after the Stadium Opening Date, either CN or the City may request that the other party enter into a separate agreement in a form satisfactory to both parties incorporating any continuing obligations of the requesting party and upon such agreement being executed and legally binding on the requesting party and, if appropriate, registered against the lands affected by such obligations, the parties shall acknowledge that the continuing obligations covered by such separate agreement shall be deemed to have been satisfied for the purpose of this Agreement.

Section 11.05 - Environmental Agreement

CN and the City agree that nothing in this Agreement shall reduce or amend the obligations of CN pursuant to the provisions of the Environmental Agreement.

Section 11.06 - Statutory Authority for Agreements

This Agreement is entered into pursuant to the City of Toronto Act, 1971, S.O. 1971, c.130, as amended by S.O. 1973, c.213, and any agreements made with CN or any other applicant respecting the matters dealt with in this Agreement are hereby made either pursuant to Section 40 of the Planning Act or pursuant to the City of Toronto Act, 1971, S.O. 1971, c.130, as amended, as may be appropriate.

Section 11.07 - Part Lot Control

The City intends to exempt the Stadium development block, being Parts 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 66, 67, 68, 69 and 72 on Schedule "S-1", from the part lot control provisions of the Planning Act at the time of enacting of the Stadium Precinct By-law and execution of this Agreement by CN and registration of the appropriate reference plan. If this Agreement does not come into full force in accordance with its terms, the City intends to re-impose the part lot control provisions of the Planning Act on such development block. CN and the City acknowledge that CN submitted as part of its Precinct Plan for the Stadium Precinct a draft Concept Plan prepared to illustrate the information required under Section 11.8(a)(i) - (a)(ix) of the Part II Plan. CN agrees to make such changes to the draft Concept Plan as may be necessary to comply with the Stadium Precinct By-law and the Environmental Agreement (the "Amended Concept Plan"). CN shall make such amendments no later than the first to occur of the Development Review Process for the Stadium or the Development Review Process for the first CN Development Site and the City shall process the application for the Amended Concept Plan at such time. The City shall use the Amended Concept Plan as a general basis for evaluating the applications for site plan approval in the Development Review Process. CN shall submit applications for site plan approval to the Development Review Process which shall conform to the Amended Concept Plan, except as the City and CN may agree to amend. Upon approval of the Amended Concept Plan by the City, the City intends to exempt the Stadium Precinct from the part lot control provisions of the Planning Act upon registration of this Agreement, including the Amended Concept Plan, on title to the Stadium Precinct Lands. If no Amended Concept Plan is approved by the City, the City confirms that upon execution of the first Development Agreement for a Development Site within a development block (the development blocks being shown approximately on Schedule F hereto as (1) Block 18(c), (2) Block 19 and CN Plaza, and (3) Block 20), the City intends to exempt such development block from the part lot control provisions of the Planning Act.

Section 11.08 - Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

CANADIAN NATIONAL RAILWAY COMPANY

By:______________________________

____

THE CORPORATION OF THE CITY OF TORONTO

By:______________________________

____

SCHEDULE "T"

Cost Apportionment of Major Infrastructure Elements

Item No.	Description	CN Contribution	Marathon Contribution	City Contribution
1.	Front St.			100%
2.	Bay St.			100%
3.	Portland St.	50%		50%
4.	Bridge for new street (between Portland and Bathurst)	50%		50%
5.	Peter St.	50%		50%
6.	Lower John St.	25%	25%	50%
7.	Lower Simcoe St.		100%(1)	
8.	Simcoe St. Tunnel			100%(2)
9.	Esplanade	66.6%(3)	66.6%(3)(4)	33.3%
10.	Local Streets	100%(3)	100%(3)	
11.	Pedestrian Bridges or Tunnels from private development to private development	100%(3)	100%(3)	
12.	Pedestrian Bridges or Tunnels from Public space to Public space	50%(5)	50%(5)	50%
13.	Community Park	100%		
14.	Central Park		Stage 1 +2	Stage 3
	i) C.P. Roundhouse Park		100%	100%
	ii) Tower Park East	75%		25%
	iii) John Street Corridor and Tower Park West	50%		50%
15.	Park Corridors	100%(3)	100%(3)	
16.	Union Plaza		100%	
17.	CN Plaza	100%		
18.	Development oriented Public Open Space	100%(3)	100%(3)	

(1) The cost sharing principles for the discreet items of infrastructure set out above are derived from a general cost sharing principle which is based on the proportionate use of these facilities.∧*

(2) This arrangement is predicated on a re-arrangement of the original 50/50 sharing for Simcoe Street, separating out the tunnel as a city responsibility subject to the following:

a) that cost sharing is equivalent to the 50-50% method with an agreed upon mechanisms for adjustment if this should not be the case;

b) provided that Marathon agree to construct Lower Simcoe Street and The Esplanade from Simcoe Street to York Street prior to or at the same time as the City construct the Simcoe Street tunnel, all subsequent to the relocation of the CPR yard.

(3) Percentage shown is only relevant to elements falling within particular land holders holdings. ∧*

(4) With respect to costs for the portion of The Esplanade fronting the Canada Post property, Canada Post are responsible for a 33.3% share for this frontage with Marathon responsible for 33.3% and the City for the remaining third.

(5) Where such connections are developed commercially, the rationale for the City's contribution will be assessed on a case by case basis.

(6) Although Marathon and Canada Post are not parties to this agreement their contribution is included in the Schedule to correspond to the cost apportionment table in the Memorandum of Conditions.

SCHEDULE "U"

Letter from Toronto Terminals Railway dated November 25, 1985.

Toronto Terminals Railway was one of the agencies to which the CN Real Estate submission on the development of Precinct "A" was circulated. Included in the precinct plan was a proposal for a wider pedestrian bridge at John Street and a new road crossing on the Peter Street alignment above the rail corridor.

This is to advise that these crossings are acceptable provided that support columns to facilitate these structures are not within the railway corridor and minimum vertical clearances of 23.5 feet from top of rail are maintained. Vertical clearance in excess of minimum may be required at either location dependent upon the impact that the design would have upon TTR operational and environmental considerations. Accordingly, I stress the importance of having the developer consult with TTR during the preliminary design stage so that the important relative factors will be addressed. Signed: G.H. Geddis, Superintendent

SCHEDULE "V"

BILL NO.

No. - 86 A BY-LAW

To amend By-law No. 612-85 to regulate the use of land and the erection, use, bulk, height, spacing of and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the Railway Lands.

(Passed)

The Council of the Corporation of the City of Toronto enacts as follows:

1. Subsection (1) of Section 3 of By-law No. 612-85 being "A By-law to regulate the use of land and the erection, use, bulk, height, spacing of and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the Railway Lands", is amended by deleting the symbols "U250" and U300" after the symbol "U200"; by inserting the symbol "L1.35," after the symbol "L1"; by inserting the symbol "L2.5," after the symbol "L1.85"; by inserting the symbol "L5.5," after the symbol "L4.5"; so that the portion of said subsection following the word "namely:" reads as follows:

"Parks District - G

Transportation District - T

Commercial-Residential Districts - CR

Industrial-Commercial Districts - IC

Holding District - h (   )

Residential Density Zones - U200, U350, U480, U595, U600, U680, U750

Commercial, Institutional and Industrial Density Zones - L0.5, L0.75, L1, L1.35, L1.85, L2.5, L3.5, L4.2, L4.5, L5.5, L7.8, L8.0, L9.0

Commercial and Institutional Density Zones - N2.5, N4 and N7

Non-Residential Density Zones - D4, D7"

2. Subsection (2) of Section 3 of the aforesaid By-law No. 612-85 is amended by deleting the words and symbols "U250 zone", and "U300 zone" after the symbol "U200 zone"; by deleting the symbols "U250" and U300" after the symbol "U200"; by inserting the word and symbol "L1.35 zone," after the word and symbol "L1 zone"; by inserting the word and symbol "L2.5 zone," after the word and symbol "L1.85 zone", by inserting the word and symbol "L5.5 zone," after the word and symbol "L4.5 zone"; by inserting the symbol "L1.35", after the symbol "L1.85"; by deleting the number 4.5" after the symbol "L4.2" and inserting the symbol "L4.5"; by inserting the symbol "L5.5," after the symbol "L4.5"; so that the portion of said subsection following the words "referred to as" reads as follows:

> "G, T, h, CR and IC buildings, structures, uses, respectively; and the expressions "G District", "T District", "h District", "CR District", "IC District", "U200 zone", "U350 zone", "U480 zone", "U595 zone", "U600

zone", "U680 zone", "U750 zone", "L0.5 zone", "L0.75 zone", "L1 zone", "L1.35 zone", "L1.85 zone", "L2.5 zone", "L3.5 zone", "L4.2 zone", "L4.5 zone", "L5.5 zone", "L7.8 zone", "L8 zone", "L9 zone", "D4 zone", "D7 zone", "N2.5 zone", "N4 zone", "N7 zone", whenever used in this by-law, mean respectively an area of the Railway Lands delineated on a District Map and designated thereon by symbols "G", "T", "h", "CR", "IC", "U200", "U350", "U480", "U595", "U600", "U680", "U750", "L0.5", "L0.75", "L1", "L1.35", "L1.85", "L2.5", "L3.5", "L4.2", "L4.5", "L5.5", "L7.8", "L8", "L9", "D4", "D7", "N2.5", "N4" and "N7"."

3. Map 1 contained in Appendix B to the aforesaid By-law No. 612-85 is amended in accordance with Schedule 1 attached to and forming part of this by-law.

4. Map 1 contained in Appendix C to the aforesaid By-law No. 612-85 is amended in accordance with Schedule 2 attached to and forming part of this by-law.

5. Clause (a) of subsection (7) of Section 4 of the aforesaid By-law No. 612-85 is amended by inserting the words "including the Ontario Hydro" after the word "Canada", so that the portion of the clause now reads as follows:

> "to prevent the use of any land or the erection or use of any building or structure in any District for the

purposes of the public service by the Corporation of the City of Toronto or any local board thereof, as defined by the Municipal Affairs Act (R.S.O. 1980 c. 303), the Toronto Harbour Commissioners, any telephone or telegraph company, any Department or agency of the Government of Ontario or Canada, including the Ontario Hydro, provided that where such land or structure is located in any District:"

6. Paragraph 3. of subsection (4) of Section 5 of the aforesaid By-law No. 612-85 is amended by deleting the words "and retail stores" and inserting the following words "retail stores and a maximum of 75 parking spaces located in an underground parking structure".

7. Paragraph 1. of Part I of subsection (3) of Section 6 of the aforesaid By-law No. 612-85 is amended by inserting the symbol "L1.35", after the symbol "L1"; by inserting the symbol "L2.5", after the symbol "L1.85"; by inserting the symbol "L5.5", after the symbol "L4.5"; by inserting the words and symbols "L1.35 zone . . . . 1.35 times the area of the lot" after the words and symbol "L1 zone . . . 1 times the area of the lot"; by inserting the words and symbol "L2.5 zone . . 2.5 times the area of the lot" after the words and symbol "L1.85 zone . . . 1.85 times the area of the lot"; by inserting the words and symbol "L5.5 zone . . . 5.5 times the area of the lot" after the words and symbol "L4.5 zone . . . 4.5 times the

area of the lot"; so that the portion of the paragraph reads as follows:

> "No person shall on any lot in any L0.5, L0.75, L1, L1.35, L1.85, L2.5, L3.5, L4.2, L4.5, L5.5, L7.8, L8 or L9 zone, as the case may be erect or use in any CR District a non-residential building or mixed-use building having a greater non-residential gross floor area than as follows:

L0.5 zone	0.5 times the area of the lot
L0.75 zone	0.75 times the area of the lot
L1 zone	1 times the area of the lot
L1.35 zone	1.35 times the area of the lot
L1.85 zone	1.85 times the area of the lot
L2.5 zone	2.5 times the area of the lot
L3.5 zone	3.5 times the area of the lot
L4.2 zone	4.2 times the area of the lot
L4.5 zone	4.5 times the area of the lot
L5.5 zone	5.5 times the area of the lot
L7.8 zone	7.8 times the area of the lot
L8 zone	8 times the area of the lot
L9 zone	9 times the area of the lot"

8. Paragraph 2. of Part I of subsection (3) of Section 6 of the aforesaid By-law No. 612-85 is amended by deleting the symbols "U250" and "U300" after the symbol "U200"; by deleting the words and symbols "U250 zone ... 250 dwelling units per

hectare of lot area or one dwelling unit for every 40 square metres of lot area" and "U300 zone ... 300 dwelling units per hectare of lot area or one dwelling unit for every 33 square metres of lot area", after the words and symbols "U200 zone ... 200 dwelling units per hectare of lot area or one dwelling unit for every 50 square metres of lot area"; by deleting the symbol "U580" and inserting in lieu thereof the symbol "U595"; by inserting the symbol "U680" after the symbol "U600" so that the portion of the paragraph reads as follows:

> "No person shall on any lot in any U200, U350, U480, U595, U600, U680 or U750 zone, as the case may be, erect or use any residential building or mixed use building having a greater number of dwelling units than as follows:

U200 zone	200 dwelling units per hectare of lot area or one dwelling unit for every 50 square metres of lot area
U350 zone	350 dwelling units per hectare of lot area or one dwelling unit for every 29 square metres of lot area
U480 zone	480 dwelling units per hectare of lot area or one dwelling unit for every 21 square metres of lot area

U595 zone	595 dwelling units per hectare of lot area or one dwelling unit for every 17 square metres of lot area
U600 zone	600 dwelling units per hectare of lot area or one dwelling unit for every 16 square metres of lot area
U680 zone	680 dwelling units per hectare of lot area or one dwelling unit for every 15 square metres of lot area
U750 zone	750 dwelling units per hectare of lot area or one dwelling unit for every 13 square metres of lot area"

9. Paragraph 3. of Part I of subsection (3) of Section 6 of the aforesaid By-law No. 612-85 is amended by deleting the symbol "U300" after the symbol "U200"; and by inserting the words and symbols "L3.5 U200 . . . 5.5 times the area of the lot" after the words and symbols "L0.75 U350 . . . 4.0 times the area of the lot; so that the portion of the subparagraph reads as follows:

"DENSITY ZONE	CONSTANT
L0.75 U350	4.0 times the area of the lot

L3.5 U200	5.5 times the area of the lot
L0.5 U600	6.5 times the area of the lot
L1 U680	7.8 times the area of the lot
L1.85 U595	7.8 times the area of the lot
L3.5 U480	7.8 times the area of the lot
L4.2 U480	7.8 times the area of the lot
L4.5 U480	7.8 times the area of the lot
L7.8 U480	7.8 times the area of the lot
L8 U750	12 times the area of the lot
L9 U750	12 times the area of the lot"

10. Paragraph 4. of Part I of subsection (3) of Section 6 of the aforesaid By-law No. 612-85 is amended by deleting the symbol "U300", after the symbol "U200"; by deleting the symbol "U580" and inserting in its place the symbol "U480".

11. Clause (b) of paragraph 6. of Part I of subsection (3) of Section 6 of the aforesaid By-law No. 612-85 is amended by inserting the words and symbol "and L3.5 U200 zones" after the symbol "L0.75 U350"; by inserting the symbol "L1.85 U595" after the symbol "L1 U680" so that the portion of the clause now reads as follows:

"Density Zone	Number of Senior Citizens Housing Dwelling Units
L0.75 U350 and L3.5 U200 zones	850 dwelling units per hectare or one dwelling unit for every 12 square metres of lot area
L0.5 U600, L1 U680, L1.85 U595, L3.5 U480, L4.5 U480 or L7.8 U480 zones	1,000 dwelling units per hectare or one dwelling unit for every 10 square metres of lot area"

12. Clause (ii) of subparagraph (c) of paragraph 6. of Part I of subsection (3) of Section 6 of the aforesaid By-law No. 612-85 is amended by inserting the symbol "L3.5 U200 zone .... 5.5 times the area of the lot" following the symbol "L0.75 U350 zone .... 4.0 times the area of the lot"; so that the portion of the clause reads as follows:

"DENSITY ZONE	CONSTANT
L0.75 U350 zone	4.0 times the area of the lot
L3.5 U200 zone	5.5 times the area of the lot

L0.5 U600 zone	6.5 times the area of the lot
L1 U680, L1.85 U595 L3.5 U480 and L7.8 U480 zones	7.8 times the area of the lot"

13. Subparagraph (a) of paragraph 7. of Part I of subsection (3) of Section 6 of the aforesaid By-law No. 612-85 is amended by inserting the symbols ",L1.35 and L2.5" after the symbol "L0.75 U350"; by deleting the word "zone" after the symbol "L0.75 U350" and inserting the word "zones" after the symbol L2.5"; by inserting the symbols ",L3.5 U200 and L5.5, "after the symbol "L0.5 U600"; by deleting the word "zone" after the symbol "L0.5 U600" and inserting the word "zones" after the symbol "L5.5"; so that the portion of the subparagraph following the words "set out below:" reads as follows:

"DENSITY ZONE	Additional Non-Residential Gross Floor Area
L0.75 U350, L1.35 and L2.5 zones	0.2 times the area of the lot
L0.5 U600, L3.5 U200 and L5.5 zones	0.4 times the area of the lot
L1 U680, L1.85 U595, L3.5 U480, L4.2 U480 L4.5 U480, L7.8 U480, L8 U750 and L9 U750 zones	0.8 times the area of the lot"

14. Subparagraph (a) of paragraph 8. of Part I of subsection (3) of Section 6 of the aforesaid By-law No. 612-85 is amended by inserting the symbol "L2.5," after the symbol "L1.85"; by inserting the symbol "L5.5," after the symbol "L4.5"; by inserting the words and symbol "L2.5 .... 2.2 times the area of the lot" after the words and symbol "L1.85 .... 1.55 times the area of the lot"; by inserting the words and symbol "L5.5 .... 5.2 times the area of the lot; so that the portion of the

subparagraph following the words "on a lot in a" reads as follows:

"L0.75, L1, L1.85, L2.5, L3.5, L4.2, L4.5, L5.5, L7.8, L8 or L9 zone in which the non-residential gross floor area used for one or more commercial purposes referred to in subparagraphs (iii) to (viii) inclusive of paragraph (b) of subsection (1) of this Section, exceeds the amount prescribed for the density zone in which the lot is located by the following table:

Density Zone	Maximum Non-Residential Gross Floor Area
L0.75	0.45 times the area of the lot
L1	0.7 times the area of the lot
L1.85	1.55 times the area of the lot
L2.5	2.2 times the area of the lot
L3.5	3.2 times the area of the lot
L4.2	3.9 times the area of the lot
L4.5	4.2 times the area of the lot

L5.5	5.2 times the area of the lot
L7.8	7.5 times the area of the lot
L8	7.7 times the area of the lot
L9	8.7 times the area of the lot"

15. Subparagraph (b) of paragraph 8. of Part I of subsection (3) of Section 6 of the aforesaid By-law No. 612-85 is amended by inserting the symbol "L2.5," after the symbol "L1.85"; by inserting the symbol "L5.5," after the symbol "L4.5"; so that the portion of the subparagraph following the words "on a lot in a" reads as follows:

"L0.75, L1, L1.85, L2.5, L3.5, L4.2, L4.5, L5.5, L7.8, L8 or L9 zone ....".

16. Subsection (4) of Section 6 of the aforesaid By-law No. 612-85 is amended by adding thereto paragraph 8. as follows:

> "8. Notwithstanding the provisions of paragraphs 1. and 3. of Part I of subsection (3) of Section 6 in calculating the maximum non-residential gross floor area permitted to be erected on a lot in a L2.5 zone, located on the west side of John Street, north of Lake Shore Boulevard West, the non-residential gross floor area used

for the purposes of a pumping station by the Municipality of Metropolitan Toronto shall be excluded in calculating the maximum non-residential gross floor area permitted to be erected on the lot."

17. Subsection (4) of Section 6 of the aforesaid By-law No. 612-85 is amended by adding thereto a new paragraph 9. as follows:

"9. No person shall erect or use any building or structure on a lot with frontage on the south side of The Esplanade West, more particularly shown on Map 2 in Appendix D attached hereto as Schedule 3, unless:

(a) a minimum of 80% of The Esplanade West frontage of the lot is occupied by a building or structure; and

(b) a setback of no greater than 0.3 metres is provided from The Esplanade West.

18. Subsection (4) of Section 6 of the aforesaid By-law No. 612-85 is amended by adding thereto paragraph 10. as follows:

"10. Subject to the provisions of paragraph 9. of subsection (4) of Section 6, no person shall erect or use any building or structure on a lot, located on the lands shown on Map 2 in Appendix D attached hereto as Schedule 3, unless the building or structure has an arcade around the perimeter of such building, generally in the areas shown on Map 2 in Appendix D attached hereto as Schedule 3, having a minimum width of 4.5 metres and a maximum width of 6.5 metres from the exterior face of the exterior wall of such building or structure; having a minimum height of 4.0 metres and a maximum height of 6.5 metres; having a minimum clear width of 4.0 metres free of any obstruction including pillars and supports between such obstruction and the exterior face of the exterior wall; and having not greater than 20% of the length of such arcade occupied by columns or other obstruction."

19. Subsection (4) of Section 6 of the aforesaid By-law No. 612-85 is amended by adding thereto a new paragraph 11. as follows:

"11. An urban stadium and multi-purpose facility including any accessory uses and the uses permitted by paragraph (b) of subsection (1) of Section 6 may be erected or used on Parcels A and B shown on Map 2 in Appendix D attached hereto as Schedule 3, provided that:

(a) the aggregate non-residential gross floor area that may be erected or used on Parcels A and B does not exceed 73 791 square metres exclusive of an urban stadium and multi-purpose facility including any accessory uses;

(b) not less than 2590 square metres of the maximum non-residential gross floor area which may be erected and used on Parcel B is used for one or more of the purposes permitted by subparagraphs (iii) and (iv) of paragraph (b) of subsection (1) of Section 6;

(c) Notwithstanding the provisions of subsections (5) and (6) of Section 4, no person shall erect or use any building or structure on Parcel A unless:

(i) a minimum of 8,000 square metres of non-residential gross floor area used for one or more of the uses permitted by paragraph (b) of subsection (1) of Section 6 is provided and maintained;

(ii) a minimum of 300 parking spaces and a maximum of 500 parking spaces are provided on Parcel A for the exclusive use of the uses provided on Parcel A;

(iii) a minimum of 1900 square metres of loading area is provided and maintained on Parcel A;

(iv) 125 parking spaces, for the parking of charter buses are provided and maintained;

(d) Notwithstanding the provisions of clause (ii) of subparagraph (c) of this paragraph, up to 575 parking spaces may be provided on Parcel A, provided that:

(i) no more than 500 parking spaces are provided for the exclusive use of the uses on Parcel A; and

(ii) the 75 parking spaces permitted by paragraph 3. of subsection (4) of Section 5 are reduced by the number of parking spaces in excess of 500 which are located on Parcel A;

(e) On Parcel B, no person shall erect or use any building or structure unless:

(i) a minimum of 1500 square metres of non-residential gross floor area used for one or more of the purposes permitted by subparagraphs (iii) and (iv) of paragraph (b) of subsection (1) of Section 6 is provided at grade and the principle entrance of any of the shops or stores referred to in said subparagraphs is located in the exterior wall of such building;

(ii) any building or structure to be erected has a minimum height of 18.5 metres and a maximum height of 26.5 metres for a minimum depth of 3.5 metres from the exterior face of the exterior wall of such building or structure;

(iii) any building or structure to be erected has an arcade around the perimeter of such building generally in the areas shown on Map 2 in Appendix D attached hereto as Schedule 3 having a minimum width of 4.5 metres and a maximum width of 6.5 metres from the exterior face of the exterior wall of such building or structure; having a minimum height of 4.0 metres and a maximum height of 6.5 metres; having a minimum clear width of 4.0 metres free of any obstruction including pillars and supports between such obstruction and the exterior face of the exterior wall; and having not greater than 20% of the length of such arcade occupied by columns or other obstruction."

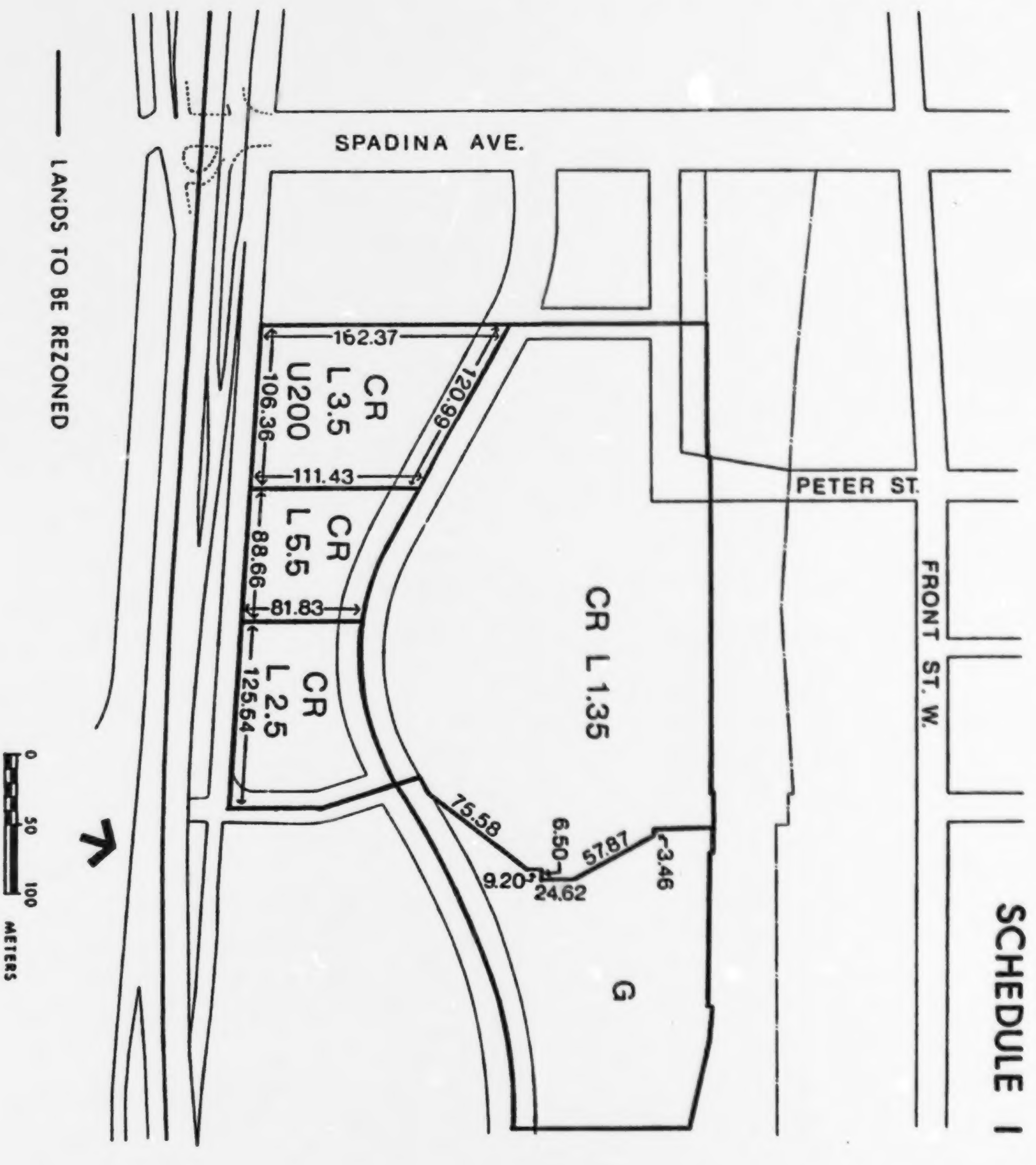
20. Subsection (4) of Section 8 of the aforesaid By-law No. 612-85 is amended by adding thereto a new paragraph 2. as follows:

"2. Notwithstanding the provisions of subsection (1) an urban stadium and multi-purpose facility may be constructed within a T zone located east of Spadina Avenue."

21. Section 9 of the aforesaid By-law No. 612-85 is amended by adding thereto subsection (4) and a paragraph 1. as follows:

"(4) EXCEPTIONS TO PERMITTED USE AND RESTRICTIONS ON USE

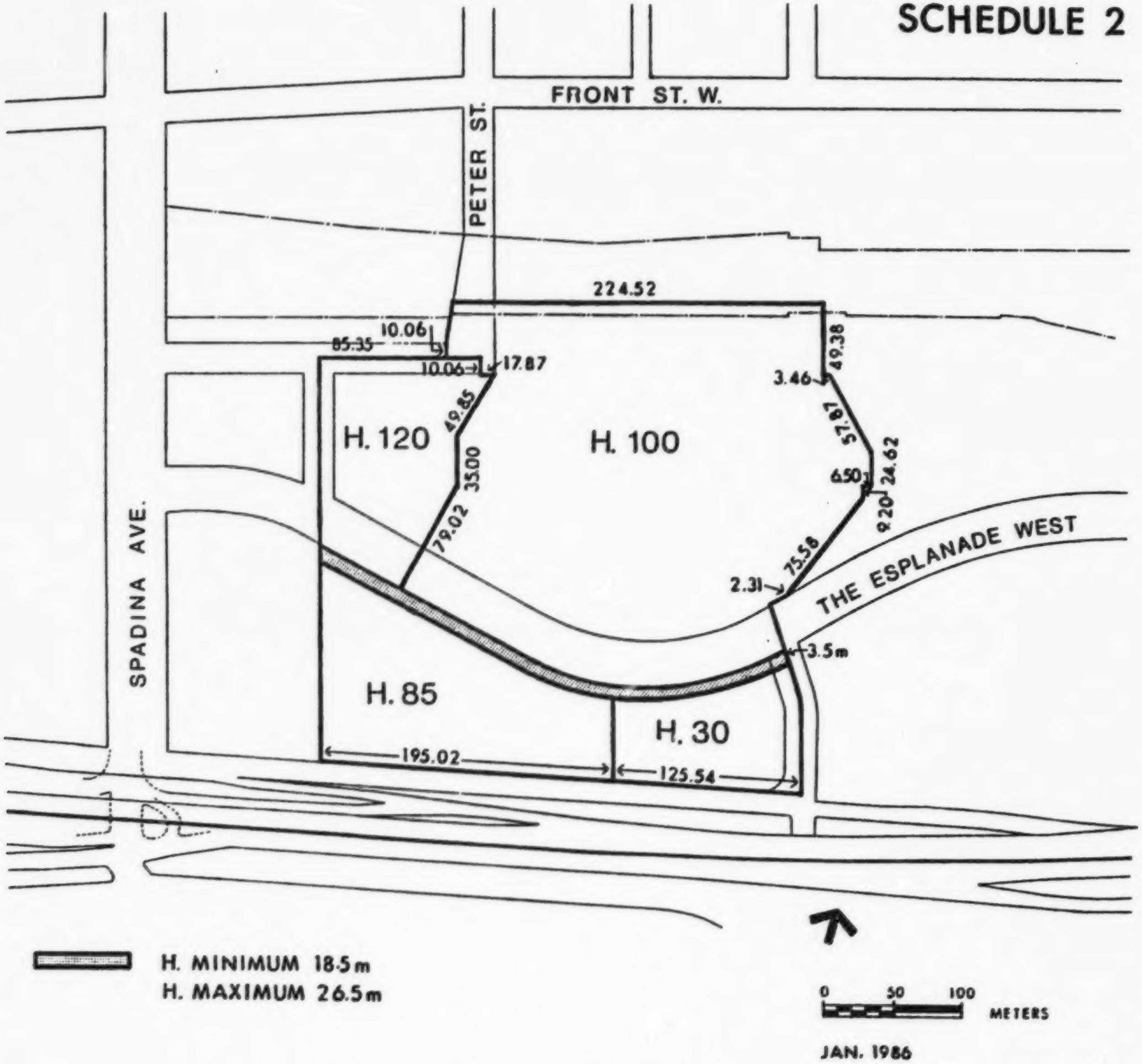
1. Notwithstanding the provisions of subsection (1), the parking of 125 charter buses required by the provisions of subclause (iv) of clause (c) of paragraph 11. of subsection (4) of Section 6 of this By-law is permitted on a lot in an h(CR L1.85 U595) zone located on the east side of Spadina Avenue, north of Lake Shore Boulevard West."



SCHEDULE I

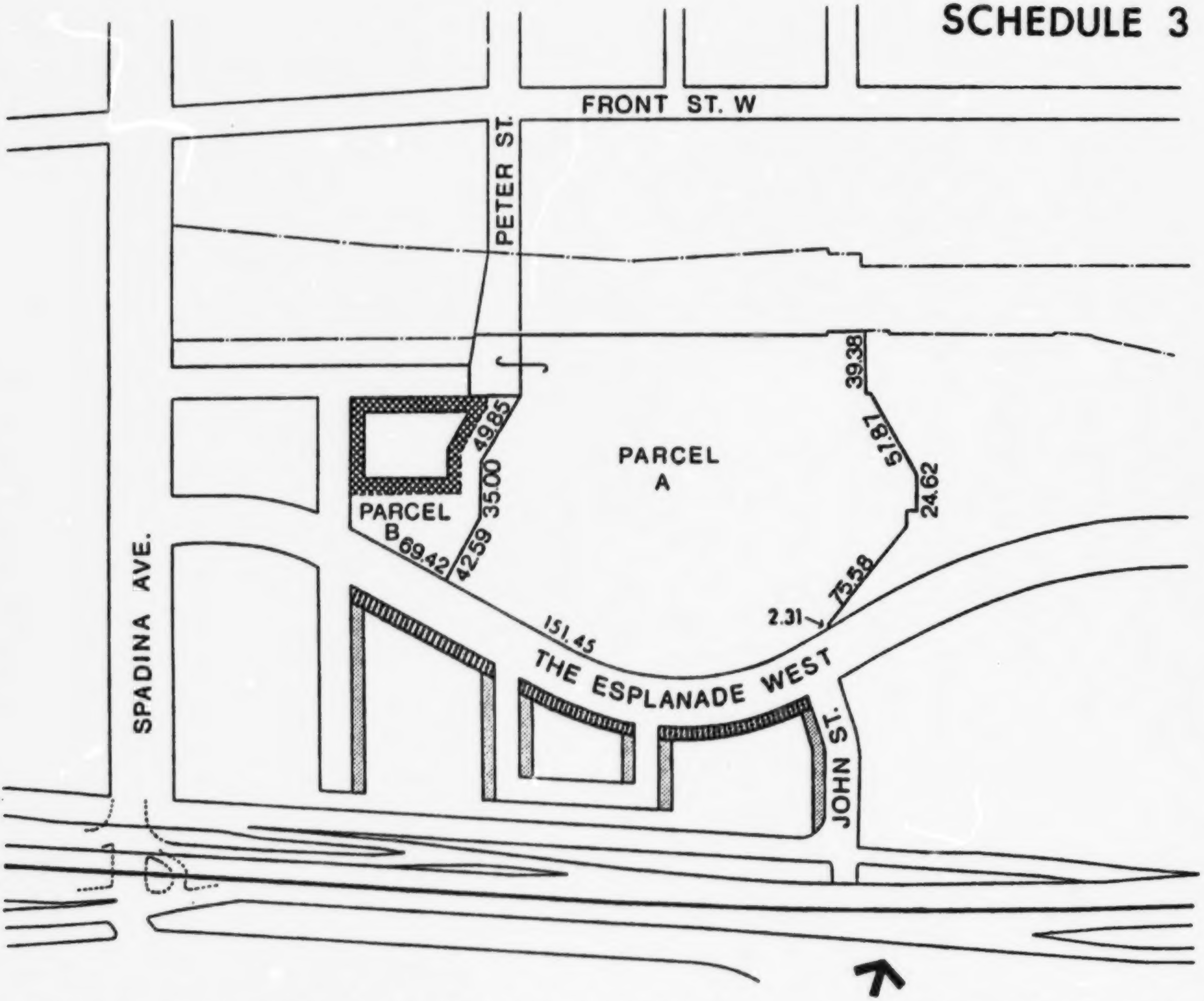
SPADINA AVE.
PETER ST.
FRONT ST. W.
CR L 1.35
G
CR L 3.5 U200
CR L 5.5
CR L 2.5
162.37
106.36
120.99
111.43
88.66
81.83
125.64
75.58
6.50
57.87
3.46
9.20
24.62
LANDS TO BE REZONED
0
50
100
METERS
JAN. 1986

SCHEDULE 2


FRONT ST. W.
PETER ST.
SPADINA AVE.
THE ESPLANADE WEST
H. 120
H. 100
H. 85
H. 30
224.52
10.06
85.35
10.06
17.87
49.85
35.00
79.02
49.38
3.46
57.87
6.50
24.62
9.20
75.58
2.31
3.5m
195.02
125.54
H. MINIMUM 18.5m
H. MAXIMUM 26.5m
0
50
100
METERS

JAN. 1986

SCHEDULE 3


FRONT ST. W
PETER ST.
SPADINA AVE.
PARCEL A
PARCEL B
69.42
42.59
35.00
49.85
151.45
2.31
75.58
24.62
57.87
39.38
THE ESPLANADE WEST
JOHN ST.

▨ AREA REFERRED TO IN SUB CLAUSE (iii) OF CLAUSE (d) OF PARAGRAPH 11 OF SUBSECTION (4) OF SECTION 6

▨ AREA REFERRED TO IN PARAGRAPH 10 OF SUBSECTION (4) OF SECTION 6

▥ AREA REFERRED TO IN PARAGRAPH 9 OF SUBSECTION (4) OF SECTION 6

APPENDIX D MAP 2

0
50
100
METERS

JAN. 1986

SCHEDULE "W"

ARCHAEOLOGICAL STRATEGY DOCUMENT

1. Introduction

The information to be submitted in a Precinct Plan as part of an application to remove the Holding Symbol from a precinct in the Railway Lands is outlined in Section 11.7 of the Official Plan Part 2 for the Railway Lands.

The applicant in accordance with 11.7(n) must submit the following:

> "(n) A description of the extent of archaeological resources or potential resources within the precinct, and the phasing of investigations in accordance with the archaeological strategy described in Section 7.6 of this Plan."

Section 7.6 of the Part II Plan reads as follows:

> It is the policy that archaeological resources be investigated, documented and if feasible conserved in accordance with a strategy developed by the City of Toronto and the Toronto Historical Board. To this end, an archaeological strategy document, utilizing archival research on historical activities, will be developed by the City of Toronto in order to provide a systematic framework for

> assessment of the archaeological remains in the Railway Lands. The strategy document will outline appropriate methods for testing, identification, documentation, recovery/mitigation and educational methods, for various classes of remains. More detailed strategies may then be required for precincts as part of a Precinct Plan."

Periodic modification of this document, or refinement for interpretation purposes within the specific precincts, shall be done as required by a review by the Toronto Historical Board in consultation with the Department of Planning and Development, who will jointly report to City Council.

The purpose of this document is to set up an archaeological strategy in accordance with Section 7.6 of the Railway Lands Part II Plan.

2. Summary of the Archaeological Strategy

The archaeological strategy follows a two-phase process:

> Assessment Phase: In order to meet the requirements of paragraph (n) of Section 11.7 cited above, the Precinct Plan submitted by the applicant shall include a heritage assessment map and a list of surface and sub-surface heritage features, as well as undertakings to facilitate the appropriate mitigation as set out below. These items are further outlined in section 3 of this document.

Mitigation Phase: Archaeological excavation, heritage recording, salvaging and other options which mitigate the loss of significant heritage resources shall be undertaken as required by the recommendations of the Assessment Phase and is consistent with the reasonable requirements of the respective construction programme. The Mitigation Phase is further outlined in section 4 of this document.

3. Assessment Phase

3.1 Assessment Phase Requirements

To assess the heritage potential of the precinct the following information shall be submitted by the applicant as part of the Precinct Plan.

a) Heritage Assessment Map

A heritage assessment map(s) at an appropriate scale delineating:

i) existing surface and subsurface structures

ii) known sites of potential prehistoric or historic archaeological interest (including location of previous shorelines, wharfs and known built structures)

iii) areas and locations of boreholes or other soil testing completed or proposed (including proposed archaeological testing where applicable)

iv) a location plan identifying areas which are to be affected by development in accordance with the Precinct Plan

Heritage Features List

A list of the features which are identified on the heritage assessment map (all existing surface and subsurface structures and all known sites of potential prehistoric or historic archaeological interest) including a summary of the potential heritage significance of the features and the proposed management options. The management options and the criteria for evaluating potential heritage significance were included in the Railway Heritage Study in Toronto, Part II, adopted by City Council at its meeting of April 9th, 1985. The management options referred to in the Railway Heritage Study are listed here in brief.

It should be noted that these management options provide a full range of possible considerations, some of which may not be applicable to individual precincts.

Management Options for Surface and Subsurface Heritage Features

Physical Retention

i) renovation

ii) reuse

iii) restoration

iv) preservation

v) mothball

vi) avoidance

vii) financial incentives (subsidized reuse)

viii) superstructure preservation

Mitigation

i) retain features:

- monuments/plaques
- trace feature
- fragment feature
- artifact display
- incorporation in new development

- incorporation in park setting
- relocation
- inventory and recording (documentation)
- Archaeological excavation

ii) demolition

iii) interpretation

The management option states the method by which the applicant is proposing, within the Precinct Plan, to mitigate the loss of a heritage resource. Estimated costs of the management option, when it is specifically undertaken as a mitigative action, shall be listed.

c) Archival Research Documentation List

A list of maps, plans, photographs, and other primary and secondary archival documentation used in the preparation and compilation of the heritage assessment map and heritage features list.

d) Other Reports

Copies of the borehole report and any other reports regarding below grade inspections, and copies of the available legal surveys and topographical maps.

In order that the Mitigation Phase can be conducted on significant heritage resources the following additional undertakings shall be included in a Precinct Plan.

) Undertaking by the Applicant for Notification of the Toronto Historical Board Regarding Development Schedule

That the Toronto Historical Board shall be advised of the proposed scheduling of construction work within the Precinct in accordance with the Memorandum of Agreement. The Toronto Historical Board shall also be advised of the accommodation of mitigative work within that schedule.

f) Undertaking by the Applicant for Limited Access during Excavation

Notwithstanding Section 8.1(d) of the Memorandum of Agreement, that access to the site beyond the 3 month period shall be provided to the Toronto Historical Board to monitor any below grade excavations (photography, measure, and/or retrieve artifacts) in a manner mutually satisfactory to the Toronto Historical Board and the Precinct Plan applicant. Limitation of access shall be such that access does not undly impede or interrupt scheduled work.

g) Undertaking by the Applicant for Notification of Discoveries

That the Toronto Historical Board shall be advised immediately of the discovery during excavation of any random archaeological resources which were not previously identified on the heritage assessment map and in such case shall take option as possible within the available construction timetable.

h) Artifact Deposition

In accordance with the Ministry of Citizenship and Culture's requirements for the issuance of an archaeological license, any archaeological artifacts shall be deposited in a recognized conservation or museum facility.

3.2 Assessment Phase Review

The submissions required by Section 11.7(n) of the Official Plan Part 2 for the Railway Lands will be reviewed by the Toronto Historical Board in consultation with the Department of Planning and Development and a joint report will then be submitted to City Council including appropriate approvals and recommendations.

4. Mitigation Phase

4.1 Scope of Mitigation Phase

> The Mitigation Phase is the period for implementing the management options as outlined in the Precinct Plan. The Phase is completed when those options have been employed. The appropriate mitigation must be established at the time of adoption of the Precinct Plan by either adoption of the proposed management options or revision of those options as recommended in the Assessment Phase Review. Testing, either by using boreholes, test pitting, test trenches, test excavations, or resistivity testing, may be required prior to mitigation of some potential subsurface sites identified in the Assessment Phase in order to determine if those sites remain an undisturbed condition.

Prior to testing, all potential subsurface archaeological sites identified in the Assessment Phase shall be considered extant and undisturbed. Testing is conducted on only those subsurface sites which are identified in the Assessment Phase as being of such potential heritage significance that archaeological excavation may be warranted.

4.2 Costs Relation to Mitigation

Costs related to mitigation will vary according to the chosen management options. Responsibilities for the costs related to mitigation will be outlined in the Assessment Phase Review. As a guideline, it is recommended that the costs of subsurface investigations be borne by the City and by the Precinct Plan applicant on a cost sharing basis to be negotiated in each precinct. Mitigation of surface structures shall be considered on an individual basis.

4.3 Mitigation Phase Review

Upon completion of specific management options of the Precinct Plan, the Toronto Historical Board shall report to the Ministry of Citizenship and Culture as required for the investigation of archaeological sites.

APPENDIX B-1

Toronto Historical Board, C.N. Spadina Roundhouse Complex. Salvage of Artifacts

DESCRIPTION	NUMBER	SIZE	LOCATION
MACHINERY			
Large capstan	1 No.	1.2m x .6 m x 1m	Outside between wheel shop and paint shop
Small capstan	1 No.	.6m x .6m x 1m	Inside paint shop
Smoke Jack and mounting assembly	1 No.	.6m diam. x 1m	Ceiling of roundhouse stall No. 10 & 11
Wheel lathe	1 No.		Wheel shop
DOORS AND HARDWARE:			
Train doors and hardware	4 No.	2m x 4 m	Doors to roundhouse Stall no. 12 & 13
General Foreman's	1 No.	1m x 2 m	Upstairs, stores

glass door			building
Apprentice classroom sliding door	1 No.	1.2 x 2m	Ground floor, stores building

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BUILDING MATERIALS:

Short timber columns	8 No.	.3m x .3m x 6m	Roundhouse, Front Row Bays 9 to 18
Long timber columns	8 No.	.3m x .3m x 7.5m	Roundhouse, Middle Row Bays 9 to 18
Timber column stock	12 No.	.3m x .3m x 6m	Outside, back of Round- near turning track

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LIGHT FIXTURES

Spun metal lamp shades	24 No.	.3m diam.	Roundhouse bays 9 to 14

SCHEDULE "X"

APPENDIX C

ONE PER CENT FOR ART GUIDELINES

Introduction

City Council has already approved the following:

"3.7 It is the policy of Council that works of art and cultural facilities be provided as part of the redevelopment of the Railway Lands.

and

11.7(o) a description of the manner in which the public art and cultural facilities described in Section 3.7 of this Plan is to be complied with in the development of the precinct." (Railway Lands: Part II Plan)

"2.5(f) CN and Marathon will agree to incorporate into each precinct agreement which they enter into provisions to support the City's objectives for public art in open spaces and public portions of buildings and the developer's corporate policies for the provisions of such public art. The specifics of these provisions shall be negotiated in the context of each precinct agreement." (Memorandum of Conditions appended to the Railway Lands: Part II Plan) and based on the Cultural Capital report, and a report from the Commissioner of Planning and Development has adopted a matter of policy, that a "1 per cent for art contribution should be provided by major developments". (Report 16 of Neighbourhoods Committee, Clause 26. October 7, 1985). "Major private developments" include (definition to come)

"1%" applies to gross construction costs, not to infrastructure or other expenses on City property. It is over and above the cost of the building landscaping and facilities that would normally be provided.

The main objective of the 1% for art program is to enhance and humanize the project and the city, for the benefit of the public. Consequently, the emphasis of the program is for art in the most publicly accessible parts of the site, and for artists to participate in creating interesting and harmonious relationships between building and street. The controls designed by the City to monitor the 1% for art program are intended to ensure the foregoing objective is met.

There are four options for meeting the 1% for art requirement.

1. The developer can simply donate 1% of his building budget to the City's capital budget for public art projects.
2. The developer can commission works to the value of 1% of his building costs.
3. The developer can invite the collaboration of artists in the design of the building exterior and public environment.
4. The developer can pool his 1% contribution with those of others in the area to come up with major neighbourhood focal points.

Option 1 would result in public art on a publicly owned site, so the developer contribution would be eligible for a tax receipt. The value of approved art-works created on City-owned lands (or lands under long-term lease to the City) under options 2-4 would also be eligible for tax receipts.

Process, Controls and Monitoring

The proposed process and controls are intended to ensure the City's objectives, as stated above, are met. Controls and monitoring are needed to make sure the proposals translate into reality as intended to protect the developers and to protect the artists. My staff will offer every assistance to help developers put their proposals together.

For option 1: developer pays his contribution as a condition of development agreement, and receives receipt.

For option 2: developer submits proposed art projects for his site as part of development review. Planning and Art Commission approval for these project proposals is necessary for development agreement, and commitment to carry out agreed upon work (including contract with the artist) is part of agreement.

For option 3: developer proposes the names of artists and parameters for the collaborative role the artists will play in the public aspects of the development project for approval by Planning and the Art Commission at the time of basic site planning and building conception, since the approved artists must be involved in preparing the relevant drawings to be submitted for development review. The contract(s) with the artist(s) become part of the development agreement to ensure implementation. This option has the best potential for meeting the City's objectives. It provides an opportunity for artists to have a significant impact on the urban environment. However, it becomes difficult to evaluate the 1%. It may be that the artists will work on aspects of the building and landscaping that would have costs associated with them in any case. The impact of the proposals will be evaluated by the Art Commission, and compared with what 1% would achieve in a more conventional - but less effective - approach.

For option 4: the first developer to proceed would submit an approved proposal and deposit his 1% in trust as part of his development agreement. If it is possible for him to proceed with his share of the joint venture, he can do this instead of depositing the funds.

Role of Planning and Development

For any major development site there are urban design considerations that affect siting and design of the project as a whole, and public art in particular. These will be identified to guide the developer as to the City's objectives for public art on his site. Staff can assist developers in preparing their proposals for approval by the Art Commission, through its role as liaison staff for the Commission. Planning staff will also be responsible for monitoring the progress of the art commissions, and can assist in smoothing out disputes among consultants.

Role of Art Commission

The Art Commission is a volunteer body of experts in the field of public art, which advises Council on the artistic merit of public art proposals. The Commission has a broad aesthetic, and is to be considered a resource to those undertaking public art projects in the City. The Commission meets on the first Thursday of every month, and will review presentations with deputants. Normally, decisions are arrived at after in camera discussions at the same meeting.

In the event that the developer and the Art Commission cannot agree on what is art and who is an artist, the Art Commission will prevail. In the event that Art Commission and the developer cannot agree on the parameters of a given proposal, the Commissioner of Planning and Development will report to Council for a ruling.

Where public art proposals present unusual maintenance problems, the matter of maintenance will be negotiated prior to entering into an agreement. It may be worth devoting part of the 1% to a long-term maintenance endowment to have a particularly unusual and interesting piece. Whether the artwork becomes City property or remains in corporate hands, an arrangement regarding eventual de-accessioning must be worked into the agreement.

Stadium Precinct: Preliminary City Objectives/Art guidelines

- Between 55% and 100% of the 1% for art funds will be spent on art in the outdoor plazas, visible and accessible to everyone at all times. This can take the form of enhanced sculptural landscaping interventions in the plazas, possibly involving water, possibly involving lighting effects, etc.

  The termination of vistas should be celebrated either through the building architecture, or through the design of open spaces. Various potentials exist on periphery of the Stadium to acknowledge relationships with the street and neighbouring facilities like the CN Tower, the Roundhouse, etc.

- Up to 20% of the 1% for art funds can be spent on art as part of the building facades and entranceways. This is not intended to hide poorly resolved architecture, but to enliven and give scale to the building.

- Up to 5% can be spent in the main entrance lobby area (visible and accessible to anyone using the building).
- Up to 15% can be spent in the Stadium area, visible to the spectators at the Stadium and in the television audience. This could involve such things as changing banner exhibits, a spectacular neon or laser light show/score board, designed by an artist, etc.
- Up to 5% can be used for free open air performances on the plaza. These must be both entertainment and art. The Toronto Arts Council is Council's advisor on performing arts issues, and is both a resource and control for this category.

SCHEDULE "Y"

This form of lease is to be amended as required to incorporate the provisions of Article VI and VII in respect of each Park and in order that it will conform with the requirements of the Agreement for the Park Lease for each Park.

PARK LEASE

THIS LEASE (herein called the "Lease") is made this

day , 19

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY

(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF TORONTO

(hereinafter called the "Tenant")

OF THE SECOND PART

In consideration of good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged by Landlord, and the rents, covenants and agreements hereinafter reserved and contained, the Parties agree as follows:

1. PREMISES AND DEMISE

The Landlord hereby demises and leases to the Tenant the lands more particularly described in Schedule A attached hereto (the "Lands"), together with any buildings, structures or improvements at any time constructed or located thereon, all of which is herein called the "Premises".

2. TERM

To have and to hold the Lands subject as herein provided, for a term commencing on (insert appropriate Release Date) and fully to be completed and ended (insert date 1,000 years after date of commencement of the term).

3. ANNUAL RENT

Yielding and paying as rental for the entire term and all renewals and extensions thereof, the sum of Two Dollars ($2.00), payment whereby has already been made and the receipt whereof is hereby acknowledged.

4. TENANT'S COVENANTS

The Tenant covenants with the Landlord as follows:

(a) any sums which may become due hereunder or be payable by the Tenant to the Landlord shall be paid at the times and in the manner in this Lease provided such sums shall bear interest from their due date until paid at an interest rate equivalent to that then charged by The Corporation of the City of Toronto or its successor for real property taxes in arrears;

Park Uses

(b) not to use or permit the Premises to be used for any other purposes other than such uses as are permitted from time to time within a park designation under the provisions of the general zoning by-law of the City of Toronto in force from time to time and for the following uses:

(This provision is to be modified by the addition of uses as required by the terms of Section 6.08 of the Stadium Precinct Agreement.)

Taxes

(c) (i) to indemnify the Landlord and hold it safe and harmless and to preserve the Landlord's title to the Lands free of claim, lien or encumbrance arising from or relating to real estate and business taxes, assessments, public utility rates and charges and other governmental charges, licence fees in respect of any and every business carried on thereon, local improvement levies and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen of any nature and kind for which the Tenant or the Landlord in respect of the Premises is or may in law become liable and which may during the term hereby demised be made, assessed, levied or imposed upon the Premises and which may become a lien upon the Lands (all of which taxes, assessments, rates or charges, levies and other governmental changes are hereinafter referred to as "Imposition") and to pay such Impositions when due; provided, however, that if by law any Imposition is payable or may at the option of the taxpayer be paid in instalments (whether or not interest accrues on the unpaid balance of the Imposition) the Tenant may pay the same together with any interest on the unpaid balance of the Imposition in instalments as the same respectively become due; provided that nothing in this Lease contained shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord, or any income, excess profits, or revenue tax of the Landlord, or any income, excess profits, or revenue tax or any other tax, assessment, charge or levy upon sums payable by the Tenant to the Landlord; and

(ii) to furnish to the Landlord, if so requested by the Landlord, official receipts of the appropriate authority, or other proof satisfactory to the Landlord, evidencing the payment of Impositions; provided, however, that the Tenant shall have the unconditional right to contest the amount or validity of any Imposition by appropriate legal proceedings or seek to vary or remove it, but this shall not be deemed or construed in any way as relieving, modifying or altering the Tenant's covenant with respect to any Imposition in this Section 4(c) provided;

(iii) not to require the Landlord to join in any legal proceedings hereinbefore mentioned unless it is necessary for the proper prosecution of such proceedings for the Landlord to do so and unless the Landlord has been fully indemnified to its reasonable satisfaction against all costs and expenses in connection therewith; nor to subject the Landlord to any liability for the payment of any costs or expenses in connection with any such proceedings brought by the Tenant; and the Tenant further covenants with the Landlord to indemnify and save harmless the Landlord from any such costs and expenses;

Compliance with Statutes, By-laws, etc.

(d) (i) throughout the term of this Lease, at the Tenant's sole cost and expense, to comply with all laws and ordinances, orders, rules, regulations and requirements of all Federal, Provincial, Regional and Municipal governments and appropriate departments, commissions and boards material to the demise herein to which the Tenant as tenant under this Lease may be subject where breach thereof might expose Landlord to liability or loss;

(ii) the Tenant shall have the right to contest by appropriate legal proceedings, without cost or expense to the Landlord, the validity of any law, ordinance, order, rule, regulation or requirement of the nature hereinbefore in this Section 4(d) referred to, and if, by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be held in abeyance without subjecting the Tenant or the Landlord to any liability of whatsoever nature for failure so to comply therewith, the Tenant may postpone compliance therewith until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all diligence and dispatch;

Construction Liens

(e) not to suffer or permit any construction lien to be registered against the Lands or any part thereof by reason of work, labour, services or material supplied or claimed to have been supplied to the Tenant or anyone holding the Lands or any part thereof through or under the Tenant if the lien attaches or might attach to the Landlord's interest in the Lands; if any such construction lien at any time is registered against the Lands, the Tenant shall cause the same to be discharged or vacated within sixty (60) days after written demand from the Landlord; provided, however, that the Tenant shall have the right to contest the amount or validity of any lien, and in such event if required by the Landlord as provided herein, the Tenant, before any forfeiture of the Landlord's interest in the Lands, shall deposit with the Landlord or into Court to the credit of the action, pending the final determination of any such action, the amount claimed in the claim for lien plus an amount for costs as may be required by applicable law or practice, or security therefor; if the Tenant fails to discharge such lien or to deposit the required moneys or security with the Landlord or into Court as aforesaid within the aforementioned period, then, in addition to any other right or remedy of the Landlord, the Landlord may, but shall not be obliged to, discharge or vacate the same by deposit into Court or by giving security or in such other manner as is, or may be prescribed by law; any amount paid by the Landlord for any of the aforesaid purposes, and all reasonable legal and other expenses of the Landlord, including reasonable solicitor's fees, in or about procuring the discharge of such lien, with all necessary disbursements in connection therewith shall be due by the Tenant on demand with interest as in Section 4(a); nothing herein contained shall imply any consent or agreement on the part of the Landlord to subject the Landlord's estate to liability under any construction lien law;

Assignment and Sublease

(f) except for the purpose of granting security to any mortgagee and except as hereinafter set forth, not to assign this Lease, in whole or in part, nor sell, agree to sell, transfer or mortgage the Lands or the leasehold interest of the Tenant, or otherwise dispose of the same, or any part or parts thereof, without first obtaining, in each and every instance, the Landlord's consent thereto in writing, which consent shall not be delayed or unreasonably withheld; no such assignment, letting, subletting or mortgage as aforesaid shall relieve the Tenant from any of the Tenant's obligations in this Lease contained; notwithstanding the foregoing provisions of this Section 4(f) it is expressly agreed that (except as hereinafter provided) the Tenant, without the Landlord's consent, may:

(i) enter into an agreement, assignment or sublease of the Lease or the Lands, in part or in whole, with any agency of Her Majesty the Queen in right of Ontario or Her Majesty the Queen in right of Canada or any corporation which is a parent, subsidiary, affiliate or associate of the Tenant or to any other Municipal corporation or to any agency of any of the foregoing which has, inter alia, a responsibility for parks;

(ii) sublease or grant concessions or licences to use and occupy any part or parts of the Lands which may be used for the purposes described in Section 4(b) provided that such subletting or granting is subject to the provisions of this Lease and shall not provide for, nor permit any subtenant or other occupant to do, or omit to do, any act or matter which would constitute a breach of this Lease;

(iii) assign the Lease or sublet the Lands, in whole or in part, by way of a charge or mortgage of the Tenant's leasehold interest including a Deed of Trust ("Mortgage"); provided that nothing herein contained, or arising by implication of law, shall be deemed to impose any liability whatsoever on the Landlord in respect of any Mortgage nor require the landlord to subordinate its interests herein.

Utility Charges

(g) to pay or cause to be paid all charges for gas, water, electricity, light, heat or power, telephone or other communications service used, rendered or supplied to or upon the Premises throughout the term of this Lease where failure to pay might expose Landlord to a liability for payment or amounts unpaid may be a lien on Landlord's reversionary interest in the Lands, and to indemnify the Landlord and save it harmless against any liability or damages on such account; the Tenant shall also at its sole cost and expense procure any and all necessary permits, licences or other authorizations required for the lawful and proper installation and maintenance upon the Lands of wires, pipes, meters, conduits, cable, tubes and other equipment and appliances for use in supplying any such services to and upon the Lands;

Indemnity

(h) to indemnify and save harmless the Landlord against and from any and all claims by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from the conduct or management of or from any work done on the Lands, and further to indemnify and save the Landlord harmless against and from any and all claims arising during the term of this Lease brought against the Landlord and against judgments, liabilities and damages which Landlord may sustain from any condition of any building, improvement or structure on the Lands, or arising from any breach or default on the part of the Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to the terms of this Lease or arising from any act of negligence or omission to act of the Tenant, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the term of this Lease on the Lands, other than by the negligence of the Landlord or any of its agents, contractors, servants, employees or licensees; and

7. LANDLORD'S REPRESENTATIONS

(a) The Landlord hereby warrants and represents to, and covenants with, the Tenant, that the Landlord has full power and right to enter into this Lease and that it has good title to the Lands free of charge or encumbrance, save only the Permitted Encumbrances identified in Schedule "B".

(b) The Landlord covenants with the Tenant that the Tenant shall and may peaceably possess and enjoy the Lands for the term hereby granted without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming by, from or under it, notwithstanding any default on the part of the Tenant of its obligations hereunder.

8. DEFAULT OF TENANT

(a) Notwithstanding any default whatsoever on the part of Tenant, the Landlord shall not have a right of re-entry under this Lease or any right to terminate this Lease, or any right to regain possession of the Lands or the Premises and the Lease shall terminate only upon expiration of its term as extended or renewed as herein provided.

(b) If the Tenant is in breach of any monetary obligation hereunder and does not remedy such breach within thirty (30) days of receipt of written notice, Landlord shall be entitled to commence proceedings to obtain a judgment to collect such sum; Landlord agrees that it shall not commence any such proceedings unless and until Tenant has failed to remedy such a breach for a period of thirty (30) days following delivery by Landlord to Tenant of written notice of default.

(c) If Tenant is in breach of any other obligation under this Lease and has not either remedied such breach within a period of sixty (60) days from the date of receipt of written notice of such breach, or in the case of a default which is not capable of being remedied within a period of thirty (30) days, if Tenant has not commenced action to remedy such breach within a period of sixty (60) days of receipt of written notice of such default, and diligently pursues the same to completion Landlord shall be entitled to commence an action for specific performance or an action for damages or both with respect to such breach. Landlord agrees that it shall not commence any such action with respect to such a breach unless Tenant has failed to remedy such breach or commence action to remedy such breach within a period of sixty (60) days after receipt of written notice of such default or such longer period as may be required as aforesaid.

(d) Landlord shall not have any right to go into possession of the Premises, to give notice of termination, to effect re-entry, or otherwise to terminate the term of this Lease, or to disturb Tenant's possession of the Premises, notwithstanding any general rule of law and notwithstanding any provisions of the Landlord and Tenant Act, or any successor statute thereto. The Landlord hereby waives all rights of re-entry in that regard. The

Landlord agrees that it shall have no right to distrain the property of Tenant.

9. OWNERSHIP OF BUILDINGS

It is expressly understood and agreed, that any buildings, structures, improvements, fixtures, equipment or chattels constructed or located on the Lands shall be and remain the property of the Tenant, provided however that the Tenant shall upon the expiration, or other sooner termination for any reason whatsoever, of the term hereby created yield up and surrender to the Landlord the buildings and other improvements of a permanent nature (other than equipment, chattels, furnishings, Tenant's fixtures and trade fixtures or things which do not constitute or affect the structural fabric of buildings and which may be removed by it) then located on or about the Lands.

10. EXTENSION OF TERM

The Landlord agrees that at the expiration of the term hereby granted, the term of this Lease shall be extended for a further term of 1,000 years. The term shall not be so extended if Tenant gives notice to Landlord that it does not wish the Lease term to be so extended provided such notice shall be given no sooner than ten (10) years and no later than one (1) year in advance of the expiration of such term. The terms and conditions of the Lease during each such extended term shall be the terms and conditions of this Lease excluding this right to extend the term.

Landlord agrees to execute such further assurances of such extension of the term as Tenant may reasonably request.

11. LANDLORD'S REMEDIES CUMULATIVE

The failure of the Landlord to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or option; a receipt by the Landlord of payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by the party so waiving; in addition to the other remedies in this Lease provided, the Landlord shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions or provisions of this Lease.

12. NOTICE

Any notice, election, demand, declaration or request which may be or is or are required to be given or made pursuant to this Lease shall (unless otherwise required by law) be given or made in writing and shall be served personally upon any executive officer of the party for whom it is intended or mailed by prepaid registered mail:

(a) in the case of the Landlord, addressed to:

CN Real Estate
145 King Street West
Toronto, Ontario
M5J 1J8

Attention: Vice President, Development

(b) In the case of the Tenant, addressed to:

The Corporation of the City of Toronto
City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: City Clerk

(c) in the case of a Mortgagee of Tenant, to the address which it has provided to the Landlord for this purpose, failing which to its usual or last known address,

or such other address in the City of Toronto or in care of such other officer as either party or a Mortgagee may from time to time advise the others by notice in writing. The date of receipt of any such notice, election, demand, declaration or request, shall be deemed to be the date of delivery of such notice, election, demand or request if served personally or if mailed as aforesaid on the 5th business day next following the date of such mailing, provided that if at the date of such mailing interruption in the operation of the postal service of Canada does or is likely to delay the mailing, such notice, election, demand or request shall be served personally.

13. ARBITRATION

Any dispute which arises between the parties hereto concerning matters under this Lease, shall be determined and settled in accordance with the following procedure. If the parties can agree in writing upon the appointment of a single arbitrator, that arbitrator shall determine the matter or matters submitted to him or her. If the parties cannot agree on the appointment of a single arbitrator then the party requiring a matter to be determined by arbitration (the first party) shall give written notice to the other party (the second party) of the matter to be determined plus the name and address of the arbitrator appointed by the first party. Within fifteen (15) days of the receipt of such notice the second party shall give notice to the first party of the name and address of the arbitrator appointed by the second party and, failing such notice by the second party, the arbitrator for the first party shall forthwith proceed to determine the matter. If such notice is given by the second party, both arbitrators shall forthwith proceed to appoint a third arbitrator who shall be chairman. If such third arbitrator has not been appointed within fifteen (15) days of the receipt of notice by the first party from the second party, either party may apply to a Judge of the Supreme Court of Ontario under the provisions of the Arbitrations Act of Ontario or any similar successor legislation then in force for the appointment of such third arbitrator. Forthwith on the appointment of the third arbitrator, the arbitrators shall determine the matter. The decision of the arbitrator or a majority of the arbitrators shall be final and binding on the parties hereto and not subject to appeal save in regard to a question of law provided that notice of such appeal is served on the other party and filed in Court within ten (10) days of the receipt by the parties of the written decision of the arbitrator or arbitrators. Each party shall bear one-half of the cost and expense of the arbitration.

14. SEVERABILITY

Each covenant and agreement contained in this Lease shall for all purposes be construed to be a separate and independent covenant and agreement and the breach of any such covenant or agreement by the Landlord except for quiet possession and enjoyment of the Lands shall not discharge or relieve the Tenant from the Tenant's obligation to perform each covenant and agreement of this Lease to be performed by the Tenant. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable the remainder of this Lease or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

15. WAIVER

The waiver by the Landlord or Tenant of a breach of a term, covenant or condition herein contained shall not be deemed to be a waiver of a subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of payment by the Landlord will not be deemed to be a waiver of a preceding breach by the Tenant of a term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular payment accepted.

16. HEADINGS

Headings and captions are inserted for convenience of reference only and are not to be considered when interpreting this Lease. All references to this Lease to paragraphs, sections and other subdivisions refer to the corresponding paragraphs, sections and other subdivisions of this Lease except as otherwise expressly provided and the words "this Lease", "herein", "hereof", "hereby", "hereunder", "hereinafter" and words of similar import refer to this Lease as a whole , and not to a particular paragraph, section or subdivision of this Lease.

17. ENTIRE AGREEMENT

This Lease contains all of the terms, covenants, conditions and agreements between the parties hereto as to the demise of the Lands and any addition to or alteration of or changes in this Lease to be binding must be made in writing and signed by both parties.

18. TIME OF THE ESSENCE

Time shall be of the essence in this Lease.

19. FORCE MAJEURE

Notwithstanding anything to the contrary contained in this Lease, if any party hereto is bona fide delayed or hindered or prevented from the performance of any term, covenant or act required or permitted hereunder by reason of strikes, labour troubles, inability to procure materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God or other reason whether of a like nature or not (but not including any inability to obtain financing or surety) which is not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then the last date for performance of such term, covenant or act shall be extended by the period of the delay and the party so delayed shall perform such term, covenant or act on or before that last date as extended. However, the provisions of this Section shall not operate to excuse the Tenant from the prompt payment of payments required by this Lease. Specific reference to this Section in this Lease shall not in any way affect its general application to provisions not containing such specific reference. Any dispute as to whether this section is applicable to any delay or hindrance shall be resolved by arbitration pursuant to Section 13.

20. REASONABLENESS

If a party is of the opinion either that the other party is not acting reasonably as provided by any term or provision of this Lease which requires that party to do so or has unreasonably withheld an approval or consent which by the terms hereof may not be unreasonably withheld, a party may have the issue of whether or not the other is acting reasonably or has unreasonably withheld its consent or approval having regard to the facts and circumstances of the particular matter involved determined by arbitration pursuant to Section 13 and if the arbitration award determines that the other party acted unreasonably, the decision shall conclusively be deemed to be reversed, and any withheld consent or approval shall be conclusively deemed to have been given. Unless otherwise expressly stated, all approvals and consents required of either party hereunder shall not be unreasonably withheld or delayed.

21. SUCCESSORS AND ASSIGNS

This Lease and the covenants and agreements herein contained shall extend to, enure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties have hereunto affixed their respective seals under the hands of their respective proper officers duly authorized in that behalf.

CANADIAN NATIONAL RAILWAY COMPANY

Per:__________________________c/s

Per:__________________________c/s

THE CORPORATION OF THE CITY
OF TORONTO

Per:__________________________c/s

Per:__________________________c/s

SCHEDULE "Z"

This form of lease is to be amended as required to incorporate the provisions of the Agreement in respect of the Streets and in order that it will conform with the requirements of the Agreement for the Street Lease for each Street

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STREET LEASE

THIS LEASE (herein called the "Lease") is made this

day , 198

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY

(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF TORONTO

(hereinafter called the "Tenant")

OF THE SECOND PART

In consideration of good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged by Landlord, and the rents, covenants and agreements hereinafter reserved and contained, the Parties agree as follows:

1. PREMISES AND DEMISE

The Landlord hereby demises and leases to the Tenant the lands more particularly described in Schedule A attached hereto the "Lands"), together with any buildings, structures or improvements at any time constructed or located thereon, all of which is herein called the "Premises".

2. TERM

To have and to hold the Lands subject as herein provided, for a term commencing on (insert appropriate Release Date) and fully to be completed and ended (insert date 40 years after date of commencement of the term).

3. ANNUAL RENT

Yielding and paying as rental for the entire term and all renewals and extensions thereof, the sum of Two Dollars $2.00), payment whereby has already been made and the receipt whereof is hereby acknowledged.

4. TENANT'S COVENANTS

The Tenant covenants with the Landlord as follows:

(a) any sums which may become due hereunder or be payable by the Tenant to the Landlord shall be paid at the times and in the manner in this Lease provided such sums shall bear interest from their due date until paid at an interest rate equivalent to that then charged by The Corporation of the City of Toronto or its successor for real property taxes in arrears;

Street Uses

(b) not to use or permit the Premises to be used for any other purposes other than for public streets and for uses ancillary thereto.

Taxes

(c) (i) to indemnify the Landlord and hold it safe and harmless and to preserve the Landlord's title to the Lands free of claim, lien or encumbrance arising from or relating to real estate and business taxes, assessments, public utility rates and charges and other governmental charges, licence fees in respect of any and every business carried on thereon, local improvement levies and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen of any nature and kind for which the Tenant or the Landlord in respect of the Premises is or may in law become liable and which may during the term hereby demised be made, assessed, levied or imposed upon the Premises and which may become a lien upon the Lands (all of which taxes, assessments, rates or charges, levies and other governmental changes are hereinafter referred to as "Imposition") and to pay such Impositions when due; provided, however, that if by law any Imposition is payable or may at the option of the taxpayer be paid in instalments (whether or not interest accrues on the unpaid balance of the Imposition) the Tenant may pay the same together with any interest on the unpaid balance of the Imposition in instalments as the same respectively become due; provided that nothing in this Lease contained shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord, or any income, excess profits, or revenue tax of the Landlord, or any income, excess profits, or revenue tax or any other tax, assessment, charge or levy upon sums payable by the Tenant to the Landlord; and

(ii) to furnish to the Landlord, if so requested by the Landlord, official receipts of the appropriate authority, or other proof satisfactory to the Landlord, evidencing the payment of Impositions; provided, however, that the Tenant shall have the unconditional right to contest the amount or validity of any Imposition by appropriate legal proceedings or seek to vary or remove it, but this shall not be deemed or construed in any way as relieving, modifying or altering the Tenant's covenant with respect to any Imposition in this Section 4(c) provided;

(iii) not to require the Landlord to join in any legal proceedings hereinbefore mentioned unless it is necessary for the proper prosecution of such proceedings for the Landlord to do so and unless the Landlord has been fully indemnified to its reasonable satisfaction against all costs and expenses in connection therewith; nor to subject the Landlord to any liability for the payment of any costs or expenses in connection with any such proceedings brought by the Tenant; and the Tenant further covenants with the Landlord to indemnify and save harmless the Landlord from any such costs and expenses;

Compliance with Statutes, By-laws, etc.

(d) (i) throughout the term of this Lease, at the Tenant's sole cost and expense, to comply with all laws and ordinances, orders, rules, regulations and requirements of all Federal, Provincial, Regional and Municipal governments and appropriate departments, commissions and boards material to the demise herein to which the Tenant as tenant under this Lease may be subject where breach thereof might expose Landlord to liability or loss;

(ii) the Tenant shall have the right to contest by appropriate legal proceedings, without cost or expense to the Landlord, the validity of any law, ordinance, order, rule, regulation or requirement of the nature hereinbefore in this Section 4(d) referred to, and if, by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be held in abeyance without subjecting the Tenant or the Landlord to any liability of whatsoever nature for failure so to comply therewith, the Tenant may postpone compliance therewith until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all diligence and dispatch;

Construction Liens

(e) not to suffer or permit any construction lien to be registered against the Lands or any part thereof by reason of work, labour, services or material supplied or claimed to have been supplied to the Tenant or anyone holding the Lands or any part thereof through or under the Tenant if the lien attaches or might attach to the Landlord's interest in the Lands; if any such construction lien at any time is registered against the Lands, the Tenant shall cause the same to be discharged or vacated within sixty (60) days after written demand from the Landlord; provided, however, that the Tenant shall have the right to contest the amount or validity of any lien, and in such event if required by the Landlord as provided herein, the Tenant, before any forfeiture of the Landlord's interest in the Lands, shall deposit with the Landlord or into Court to the credit of the action, pending the final determination of any such action, the amount claimed in the claim for lien plus an amount for costs as may be required by applicable law or practice, or security therefor; if the Tenant fails to discharge such lien or to deposit the required moneys or security with the Landlord or into Court as aforesaid within the aforementioned period, then, in addition to any other right or remedy of the Landlord, the Landlord may, but shall not be obliged to, discharge or vacate the same by deposit into Court or by giving security or in such other manner as is, or may be prescribed by law; any amount paid by the Landlord for any of the aforesaid purposes, and all reasonable legal and other expenses of the Landlord, including reasonable solicitor's fees, in or about procuring the discharge of such lien, with all necessary disbursements in connection therewith shall be due by the Tenant on demand with interest as in Section 4(a); nothing herein contained shall imply any consent or agreement on the part of the Landlord to subject the Landlord's estate to liability under any construction lien law;

Assignment and Sublease

(f) except for the purpose of granting security to any mortgagee and except as hereinafter set forth, not to assign this Lease, in whole or in part, nor sell, agree to sell, transfer or mortgage the Lands or the leasehold interest of the Tenant, or otherwise dispose of the same, or any part or parts thereof, without first obtaining, in each and every instance, the Landlord's consent thereto in writing, which consent shall not be delayed or unreasonably withheld; no such assignment, letting, subletting or mortgage as aforesaid shall relieve the Tenant from any of the Tenant's obligations in this Lease contained; notwithstanding the foregoing provisions of this Section 4(f) it is expressly agreed that (except as hereinafter provided) the Tenant, without the Landlord's consent, may:

(i) enter into an agreement, assignment or sublease of the Lease or the Lands, in part or in whole, with any agency of Her Majesty the Queen in right of Ontario or Her Majesty the Queen in right of Canada or any corporation which is a parent, subsidiary, affiliate or associate of the Tenant or to any other Municipal corporation or to any agency of any of the foregoing which has a responsibility for, inter alia, streets;

(ii) sublease or grant concessions or licences to use and occupy any part or parts of the Lands which may be used for the purposes described in Section 4(b) provided that such subletting or granting is subject to the provisions of this Lease and shall not provide for, nor permit any subtenant or other occupant to do, or omit to do, any act or matter which would constitute a breach of this Lease;

(iii) assign the Lease or sublet the Lands, in whole or in part, by way of a charge or mortgage of the Tenant's leasehold interest including a Deed of Trust ("Mortgage"); provided that nothing herein contained, or arising by implication of law, shall be deemed to impose any liability whatsoever on the Landlord in respect of any Mortgage nor require the landlord to subordinate its interests herein.

Utility Charges

(g) to pay or cause to be paid all charges for gas, water, electricity, light, heat or power, telephone or other communications service used, rendered or supplied to or upon the Premises throughout the term of this Lease where failure to pay might expose Landlord to a liability for payment or amounts unpaid may be a lien on Landlord's reversionary interest in the Lands, and to indemnify the Landlord and save it harmless against any liability or damages on such account; the Tenant shall also at its sole cost and expense procure any and all necessary permits, licences or other authorizations required for the lawful and proper installation and maintenance upon the Lands of wires, pipes, meters, conduits, cable, tubes and other equipment and appliances for use in supplying any such services to and upon the Lands;

Indemnity

(h) to indemnify and save harmless the Landlord against and from any and all claims by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from the conduct or management of or from any work done on the Lands, and further to indemnify and save the Landlord harmless against and from any and all claims arising during the term of this Lease brought against the Landlord and against judgments, liabilities and damages which Landlord may sustain from any condition of any building, improvement or structure on the Lands, or arising from any breach or default on the part of the Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to the terms of this Lease or arising from any act of negligence or omission to act of the Tenant, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the term of this Lease on the Lands, other than by the negligence of the Landlord or any of its agents, contractors, servants, employees or licensees; and

7. LANDLORD'S REPRESENTATIONS

(a) The Landlord hereby warrants and represents to, and covenants with, the Tenant, that the Landlord has full power and right to enter into this Lease and that it has good title to the Lands free of charge or encumbrance, save only the Permitted Encumbrances identified in Schedule "B".

(b) The Landlord covenants with the Tenant that the Tenant shall and may peaceably possess and enjoy the Lands for the term hereby granted without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming by, from or under it, notwithstanding any default on the part of the Tenant of its obligations hereunder.

8. DEFAULT OF TENANT

(a) Notwithstanding any default whatsoever on the part of Tenant, the LLandlord shall not have a right of re-entry under this Lease or any right to terminate this Lease, or any right to regain possession of the Lands or the Premises and the Lease shall terminate only upon expiration of its term as extended or renewed as herein provided.

(b) If the Tenant is in breach of any monetary obligation hereunder and does not remedy such breach within thirty (30) days of receipt of written notice, Landlord shall be entitled to commence proceedings to obtain a judgment to collect such sum; Landlord agrees that it shall not commence any such proceedings unless and until Tenant has failed to remedy such a breach for a period of thirty (30) days following delivery by Landlord to Tenant of written notice of default.

(c) If Tenant is in breach of any other obligation under this Lease and has not either remedied such breach within a period of sixty (60) days from the date of receipt of written notice of such breach, or in the case of a default which is not capable of being remedied within a period of thirty (30) days, if Tenant has not commenced action to remedy such breach within a period of sixty (60) days of receipt of written notice of such default and diligently pursue the same to completion, Landlord shall be entitled to commence an action for specific performance or an action for damages or both with respect to such breach. Landlord agrees that it shall not commence any such action with respect to such a breach unless Tenant has failed to remedy such breach or commence action to remedy such breach within a period of sixty (60) days after receipt of written notice of such default or such longer period as may be required as aforesaid.

(d) Landlord shall not have any right to go into possession of the Premises, to give notice of termination, to effect re-entry, or otherwise to terminate the term of this Lease, or to disturb Tenant's possession of the Premises, notwithstanding any general rule of law and notwithstanding any provisions of the Landlord and Tenant Act, or any successor statute thereto. The Landlord hereby waives all rights of re-entry in that regard. The Landlord agrees that it shall have no right to distrain the property of Tenant.

9. OWNERSHIP OF BUILDINGS

It is expressly understood and agreed, that any buildings, structures, improvements, fixtures, equipment or chattels constructed or located on the Lands shall be and remain the property of the Tenant, provided however that the Tenant shall upon the expiration, or other sooner termination for any reason whatsoever, of the term hereby created yield up and surrender to the Landlord the buildings and other improvements of a permanent nature (other than equipment, chattels, furnishings, Tenant's fixtures and trade fixtures or things which do not constitute or affect the structural fabric of buildings and which may be removed by it) then located on or about the Lands.

10. LANDLORD'S REMEDIES CUMULATIVE

The failure of the Landlord to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such covenant or option; a receipt by the Landlord of payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by the party so waiving; in addition to the other remedies in this Lease provided, the Landlord shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions or provisions of this Lease.

11. NOTICE

Any notice, election, demand, declaration or request which may be or is or are required to be given or made pursuant to this Lease shall (unless otherwise required by law) be given or made in writing and shall be served personally upon any executive officer of the party for whom it is intended or mailed by prepaid registered mail:

(a) in the case of the Landlord, addressed to:

CN Real Estate
145 King Street West
Toronto, Ontario
M5J 1J8

Attention: Vice President, Development

(b) In the case of the Tenant, addressed to:

The Corporation of the City of Toronto
City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: City Clerk

(c) in the case of a Mortgagee of Tenant, to the address which it has provided to the Landlord for this purpose, failing which to its usual or last known address,

or such other address in the City of Toronto or in care of such other officer as either party or a Mortgagee may from time to time advise the others by notice in writing. The date of receipt of any such notice, election, demand, declaration or request, shall be deemed to be the date of delivery of such notice, election, demand or request if served personally or if mailed as aforesaid on the 5th business day next following the date of such mailing, provided that if at the date of such mailing interruption in the operation of the postal service of Canada does or is likely to delay the mailing, such notice, election, demand or request shall be served personally.

12. SEVERABILITY

Each covenant and agreement contained in this Lease shall for all purposes be construed to be a separate and independent covenant and agreement and the breach of any such covenant or agreement by the Landlord except for quiet possession and enjoyment of the Lands shall not discharge or relieve the Tenant from the Tenant's obligation to perform each covenant and agreement of this Lease to be performed by the Tenant. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable the remainder of this Lease or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

13. WAIVER

The waiver by the Landlord or Tenant of a breach of a term, covenant or condition herein contained shall not be deemed to be a waiver of a subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of payment by the Landlord will not be deemed to be a waiver of a preceding breach by the Tenant of a term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular payment accepted.

14. HEADINGS

Headings and captions are inserted for convenience of reference only and are not to be considered when interpreting this Lease. All references to this Lease to paragraphs, sections and other subdivisions refer to the corresponding paragraphs, sections and other subdivisions of this Lease except as otherwise expressly provided and the words "this Lease", "herein", "hereof", "hereby", "hereunder", "hereinafter" and words of similar import refer to this Lease as a whole , and not to a particular paragraph, section or subdivision of this Lease.

15. ENTIRE AGREEMENT

This Lease contains all of the terms, covenants, conditions and agreements between the parties hereto as to the demise of the Lands and any addition to or alteration of or changes in this Lease to be binding must be made in writing and signed by both parties.

16. TIME OF THE ESSENCE

Time shall be of the essence in this Lease.

17. FORCE MAJEURE

Notwithstanding anything to the contrary contained in this Lease, if any party hereto is bona fide delayed or hindered or prevented from the performance of any term, covenant or act required or permitted hereunder by reason of strikes, labour troubles, inability to procure materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God or other reason whether of a like nature or not (but not including any inability to obtain financing or surety) which is not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then the last date for performance of such term, covenant or act shall be extended by the period of the delay and the party so delayed shall perform such term, covenant or act on or before that last date as extended. However, the provisions of this Section shall not operate to excuse the Tenant from the prompt payment of payments required by this Lease.

18. REASONABLENESS

Unless otherwise expressly stated, all approvals and consents required of either party hereunder shall not be unreasonably withheld or delayed.

19. SUCCESSORS AND ASSIGNS

This Lease and the covenants and agreements herein contained shall extend to, enure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

20. OPTION TO PURCHASE

In consideration of other good and valuable consideration and the sum of Two Dollars ($2.00) now paid by the Tenant to the Landlord, the receipt whereof is hereby acknowledged:

(a) the Landlord hereby grants to the Tenant the option to purchase the Premises for the purchase price of One Dollar ($1.00) on the terms and subject to the conditions hereinafter set forth;

(b) the option herein granted may be exercised only by written notice of exercise given to the Landlord by the Tenant at any time during the term and upon exercise in accordance with this clause (b) the parties shall complete the transaction at the end of the term;

(c) at any time during the term of this Lease on not less than sixty (60) days' prior written notice to Tenant, the Landlord may require that the Tenant exercise the option to purchase the Premises herein granted in which event the transaction of purchase and sale shall be closed on the date set out in such notice, which date shall not be earlier than sixty (60) days after the date of notice and not later than the end of the term and upon the exercise of the option in accordance with the provisions of this clause (c) the parties shall complete the purchase transaction on the date for completion set forth in such notice;

(d) Landlord shall transfer freehold title to Tenant free and clear of encumbrance, save for Permitted Encumbrances as identified in Schedule "B" annexed; Landlord shall deliver to Tenant such documents, deeds and assurances as are required to transfer such title to Tenant; Landlord agrees to obtain and register discharges of any liens or encumbrances affecting the freehold title to the Premises, save for Permitted Encumbrances;

(e) if Tenant exercises its option to purchase prior to the commencement of the fortieth year of the term, Landlord agrees upon request to execute and deliver to Tenant for registration a transfer of the Premises which by its terms shall effect transfer of title only on the last day of the fortieth year of the term; notwithstanding delivery of such a transfer, Landlord agrees to grant such further assurances of the transfer of the Premises as Tenant may request.

IN WITNESS WHEREOF the parties have hereunto affixed their respective seals under the hands of their respective proper officers duly authorized in that behalf.

CANADIAN NATIONAL RAILWAY COMPANY

Per:___________________________c/s

Per:___________________________c/s

THE CORPORATION OF THE CITY
OF TORONTO

Per:___________________________c/s

Per:___________________________c/s